

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 12TH DAY OF MAY 2020 / 22ND VAISAKHA, 1942

BA NO.2739 OF 2020

(Crime.No. 346/2020 of Pazhayannur Police Station, Thrissur)

Applicants/Accused Nos.1 to 3:

1. Sanal, aged 29 years,
S/o.Sasi, Malambathy House,
Elanad, Thrissur.
2. Sunil, aged 22 years,
S/o.Sasi, Malambathy House,
Thirumani, Elanad, Thrissur.
3. Manu, aged 31 years,
S/o.Mani (Wrongly shown as Manu),
Palliyel House, Thirumani,
Elanad, Thrissur.

BY ADV.SRI.V.A.JOHNSON(VAIKKAPPALLIL)

Respondents/Complainant and State:

1. State of Kerala, represented by
Public Prosecutor, High Court of
Kerala, Ernakulam-682031.
2. The Sub Inspector of Police,
Pazhayannur Police Station,
Thrissur-680587.

By P.P. Sri.Ajith Murali & Santhosh Peter(Sr)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
12.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.2739 of 2020

Dated this the 12th day of May, 2020

O R D E R

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioners are accused 1 to 3 in Crime No.346 of 2020 of Pazhayannur Police Station registered alleging offences punishable under Sections 55(a) and 8(1) and 8(2) of the Abkari Act.

3.The prosecution case is that on 26.04.2020, at 8 pm, the accused were found in possession of 500 ml of arrack in violation of the provisions of the Kerala Abkari Act. The petitioners are arrested on 27.04.2020.

4. The counsel for the petitioners submitted that the petitioners are in custody from 27.04.2020 onwards. They are ready to abide any condition, if this court granting bail to them.

5.The learned Public Prosecutor submitted that there is no

criminal antecedents against the petitioners and if this court granting bail to the petitioners, stringent conditions may be imposed.

6. In the light of the facts and circumstances of this case, I think this bail application can be allowed. The quantity of contraband seized from the petitioners is only 500 ml of arrack. The petitioners are in custody from 27.04.2020. Considering the submission of the counsel for the petitioners and also the submission of the learned Public Prosecutor, this bail application can be allowed.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in **Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020)** and a Full Bench of this Court in **W.P(C)No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme

Court in **Chidambaram. P v Directorate of Enforcement (2019 (16) SCALE 870)**, after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The Superintendent of Jail concerned where the petitioners are incarcerated is directed to release the petitioners on bail on executing a self bond ensuring that they will appear before the Court concerned as and when required, if they are not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioners as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioners would be residing after their release.

3. The Superintendent of Jail concerned, immediately after release of the petitioners will forthwith forward the bail bond obtained from the petitioners to the jurisdictional Court.

4. The petitioners immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish their phone number and the place where they are going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioners and shall ensure that the petitioners do not violate the terms of the undertaking.

5. The petitioners shall appear before the

Investigating Officer as and when required. The petitioners shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

6. The petitioners shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioners shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

8. If any of the above conditions are

violated by the petitioners, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

YKB