

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 15TH DAY OF MAY 2020 / 25TH VAISAKHA, 1942

BA NO.2746 OF 2020

(Crime No. 1491 of 2020 of the Kodungalore Police Station, Pending before the
JFCM, Kodungallore, Thrissur District)

Petitioner/2nd Accused :-

Rashid @ Ichayi, aged 25, S/o.Noushad, Ullissery House, Chappara,
Kavilkadavu Desom, Pullutt Village, Kodungallore Taluk, Thrissur
District,

By Adv.Bitto.N.L.

Respondent/State of Kerala:-

1. The State of Kerala, rep. by the public Prosecutor High court of
Kerala at Ernakulam
2. Sub Inspector of Police, Kodungallore Police station, Chalakudy P.O.,
Thrissur district, Pin. 680664

By P.P. Sri.B.JAYASURYA (SR) & C.K.PRASAD

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ALONG WITH BA
NO.2935 OF 2020 ON 15.05.2020, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

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THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

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BA NO.2935 OF 2020

(Crime No. 1491 of 2020 of the Kodungallore Police Station, Thrissur District,
Pending before the JFCM, Kodungallore, Thrissur District)

Petitioners/ Accused Persons 1 and 3 :-

1. Abhijith, aged 24, S/o.Subhash, Pattali House, Kavilkadavu Desom,
Lokamalleswaram Village, Kodungallore Taluk, Thrissur District
2. Biju, aged 24, S/o. Prakasan, Varissery House, Chalakulam Desom

**BY ADV. BITTO.N.L,
K.N.Radhakrishnan &
R.Kishore,**

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NO.2746 OF 2020 ON 15.05.2020, THE COURT ON THE SAME DAY PASSED
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P.V.KUNHIKRISHNAN, J

B.A.Nos.2746 and 2935 of 2020

Dated this the 15th day of May, 2020

O R D E R

These Bail Applications filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioners are the accused in Crime No.1491 of 2020 of Kodungallore Police Station registered alleging offences punishable under Sections 8(1) and 8 (2) of the Kerala Abkari Act. The petitioner in BA.No.2746 of 2020 is the 2nd accused and the petitioners in BA.No.2935 of 2020 are accused nos.1 and 3. Petitioners were arrested on 01.05.2020 and they are in custody.

3.The prosecution case is that the petitioners were found in possession of 3.200 liters of arrack.

4. The counsel for the petitioners submitted that the petitioners are ready to abide any conditions, if this Court grant bail to them. They are in custody for the last several days.

5.The learned Public Prosecutor submitted that, if this Court is granting bail, stringent conditions may be imposed.

6.After hearing both sides, considering the fact that the petitioners are in custody from 01.05.2020 and also considering the quantity of the contraband seized and also based on the submission of the Public Prosecutor, this Bail Application is 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. 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, 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) 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 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 to law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE