

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.2760 OF 2020

(CRIME NO. 1191 OF 2020 OF SASTHAMCOTTAH POLICE STATION, KOLLAM DISTRICT)

Petitioners/Accused

1. Nowshad aged 32, S/o Abdul Karim
Madathil Padinjattethil House, Maveli Muri, Panmana Village,
Kollam District. Now temporarily resides at Pullontayyathu
Padinjattethil, Mullakkeri Muri, -do- Village.
2. Suni ,aged 32, S/o Surendran Suni Bhavan,
Mannakara Muri, Sasthamcottah Village, Kollam District.
3. Vishnu, aged 32 S/o Rajan Vishnu Bhavan,
Mannakkara Muri, Sasthamcottah Village, Kollam District. Now
temporary resides at Krishnamangalath House, -do- Muri and
Village.

By Adv. Sri. M.P. Madhavankutty

Respondents/ Complainants:

1. State of Kerala,
Represented by Public Prosecutor,
High Court of Kerala,
Ernakulam. Pin – 682 031.
2. Sub Inspector of Police,
Sasthamcottah Police Station,
Kollam District,
Represented by Public Prosecutor,
High Court Of Kerala,
Ernakulam. Pin – 682 031.

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

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 15.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.2760 of 2020

Dated this the 15th 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 the accused in Crime No. 1191 of 2020 of Sasthamcottah Police Station registered alleging offences punishable under Section 55 (a) and (i) and Section 8(i) and (ii) of Abkari Act. 1st and 2nd accused were arrested on 02.05.2020 and 3rd accused was arrested on 03.05.2020

3.The prosecution case is that the petitioners was found in possession of 3 litres 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 1st and 2nd petitioners are in custody from 02.05.2020 and 3rd accused was in custody from 03.05.2020 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

VPK