

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.2768 OF 2020

(Crime No. 621 of 2020 of the Chalakudy Police Station, Pending before the JFCM, Chalakudy, Thrissur District)

Petitioner/ Sole Accused :-

Girish, aged 40, S/o.Velayudhan, Ollukkaran House, Near Parakottilingal Temple, Potta P.O., Potta Village, Chalakudy Taluk, Thrissur District

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, Chalakudy Police Station, Chalakudy P.O., Chalakudy P.O., Thrissur district, 680307

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.2768 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. Petitioner is the accused in Crime No.621 of 2020 of Chalakudy Police Station. The above case is registered against the petitioner alleging offences punishable under Section 55(g) of the Kerala Abkari Act.

3. The prosecution case is that, the petitioner was found in possession of 50 litres of wash.

4. The counsel for the petitioner submitted that, he is innocent and he is ready to abide any conditions, if this Court grant bail to him. According to him, no contraband is seized from the petitioner.

5. The learned Public Prosecutor opposed the bail application, huge quantity of material for manufacturing illicit

liquor is seized from the petitioner. The learned Public Prosecutor submitted that, this Court may not entertain an application under Section 439 Cr.P.C.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. When the Public Prosecutor oppose the bail application, there are limitation to this Court to grant bail as per Section 41A of the Abkari Act. Moreover, huge quantity of wash is seized from the petitioner and he is in custody only from 28.04.2020. In such circumstances, I am not in a position to allow this bail application.

7. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)**. The apex court held that, the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the

severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the

light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

P.V.KUNHIKRISHNAN, JUDGE

VPK