

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.2770 OF 2020

(In C.R. No. 108 / 2020 of Excise Range Office, Adoor in Pathanamthitta District)

PETITIONER / ACCUSED

Shaji, aged 49 years,
S/o Bhanu
Shaji Bhavan,
Thengamom, Pallikkal, Adoor,
Pathanamthitta District, PIN: - 691523

By Adv. Sri. K.V.Anil Kumar

RESPONDENTS / STATE & COMPLAINANT

1. State of Kerala represented by the Public Prosecutor, High Court of Kerala, Ernakulam.
2. Excise Range Officer, Excise Range Office Adoor, Pathanamthita District.

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.2770 of 2020

Dated this the 15th day of May, 2020

O R D E R

This Bail Application filed under Section 438 of Criminal Procedure Code (Cr.P.C) was heard through Video Conference.

2. Petitioner is the accused in Crime No.108/2020 of Adoor Excise Range registered alleging offences punishable under Sections 8(1) (2) and 55(g) of the Abkari Act.

3. The prosecution case is that the petitioner was found in possession of 287 liters of wash and one liter arrack.

4. The counsel for the petitioner submitted that, the contraband article is not seized from his physical possession and he has no connection with the same. He also submitted that there is no criminal antecedents against him and he is ready to comply any condition, if this Court is granting bail to the petitioner.

5. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that huge quantity of wash is seized from the possession of the petitioner

and the petitioner is coming before this Court under Section 438 Cr.P.C.

6. After hearing both sides, I am not inclined to allow this petition. Huge quantity of wash is seized from the possession of the petitioner, of course, the petitioner disputes the same. Its a matter to be decided at the time of trial. The learned Public Prosecutor opposed the bail application. When the learned Public Prosecutor opposed the bail application, jurisdiction of this Court is limited. Hence considering the facts and circumstances of this case, I am dismissing this bail application.

7. Moreover, the jurisdiction to grant bail under Sec.438 Cr.P.C has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Directorate of Enforcement (AIR 2019 SC 4198)**. The anticipatory bail is not to be granted as a matter of rule and it has to be granted only when court is convinced that exceptional circumstances exists to resort to the extraordinary jurisdiction.

8. It is true that, there is no hard and fast rule regarding grant or refusal to grant anticipatory 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 under Sec.438 Cr.P.C. Hence this Bail Application is dismissed.

P.V.KUNHIKRISHNAN
JUDGE

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