

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.2771 OF 2020

(Crime No. 39 of 2020 of the Irinjalakuda Excise Range, Pending before the JFCM, Irinjalakuda, Thrissur District)

Petitioner/ Sole Accused :-

Babu, aged 49, S/o.Gopalan, Chirapurath House, Kallur Muttithadi Desom, Kallur Village, Mukundapuram 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. Excise Inspector, Excise Range Office, Irinjalakuda, Irinjalakuda P.O., Thrissur district, 680121

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**

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B.A.No.2771 of 2020  
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Dated this the 15<sup>th</sup> 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.39 of 2020 of Irinjalalakuda Excise Range. The above case is registered against the petitioner alleging offences punishable under Sections 55(g) of Kerala Abkari Act. Petitioner was arrested on 30.04.2020 and he is in custody.

3. The prosecution case is that, the petitioner was found in possession of 145 litres of wash.

4. The counsel for the petitioner submitted that, the contraband is not seized from his physical possession. The petitioner has no connection with the contraband article. The petitioner is in custody from 30.04.2020 onwards.

5. The learned Public Prosecutor that, huge quantity of illicit liquor with utensils were seized from the petitioner. In such circumstances, the learned Public Prosecutor opposed the bail application.

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 opposed the bail application Section 41 A of the Abkrai Act, give certain limitation of the Court to grant bail. I am not in a position to say that the petitioner has not committed the offence and he will not commit similar offence. 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