

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.2776 OF 2020

(IN CRIME NO.39/2020 OF NOORANADU EXCISE RANGE OFFICE,
ALAPPUZHA DISTRICT)

PETITIONER/ ACCUSED

PUSHPAKUMAR,
AGED 45, S/O.ACHUTHAN,
KUTTIYIL PUTHANVEEDU,
THAMARAKKULAM KIZHEKKUMURI,
THAMARAKKULAM VILLAGE, ALAPPUZHA DISTRICT.

BY. ADV.SRI M.V.THAMBAN
ADV.SRI R.REJI
ADV.SMT.THARA THAMBAN
ADV.SRI B.BIPIN

RESPONDENTS/COMPLAINANTS

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 018
2. THE EXCISE RANGE OFFICER,
NOORANADU EXCISE RANGE,
NOORANADU (PO), ALAPPUZHA DISTRICT, PIN- 690 504

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:

B.A.No. 2776 of 2020

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P.V.KUNHIKRISHNAN, J

B.A.No. 2776 of 2020

Dated this the 15th day of May, 2020

ORDER

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No. 39 of 2020 of Nooranadu Excise Range. The above case is registered against the petitioner alleging offences punishable under Sections 8(1), (2) and 55(g) of the Abkari Act.

3.The prosecution case is that on 02.04.2020, at about 1.00 p.m., 10 litres of arrack, 190 litres of Koda along with cans and utensils were seized from a paramba. According to the prosecution, the petitioner is

in conscious possession of these contraband articles.

4. The counsel for the petitioner submitted that, the petitioner has no connection with the alleged seizure. He has no criminal background. He is ready to abide any condition, if this Court is granting bail.

5. The learned Public Prosecutor opposed the Bail Application. The Public Prosecutor submitted that, huge quantity of materials for manufacturing illicit liquor is seized from the petitioner. Moreover, the Public Prosecutor also submitted that the petitioner is coming with the petition under Section 438 Cr.P.C. Therefore, this Court may not entertain the Bail Application.

6. After considering the facts and circumstances of this case, I am not in a position to accept the contentions of the petitioner. Section 41A of the Abkari Act says that, this Court can grant bail, only if this Court is convinced that the petitioner has not committed the

offence and he will not commit similar offence in future. I am not in a position to conclude at this stage that, the petitioner has not committed the offence and he will not commit similar offences. Moreover, huge quantity of materials for manufacturing illicit liquor is seized and the investigation is going on. In such circumstances, I am not able to consider this Bail Application under Section 438 Cr.P.C. Hence, this Bail Application is dismissed.

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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