

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.2800 OF 2020

(CRIME NO: 36 OF 2020 OF TIRUR EXCISE RANGE OFFICE,
MALAPPURAM DISTRICT)

PETITIONER:-

VINOD, S/O KUNHAN, AGED 50 YEARS,
RESIDING AT VATTAPARAMBIL HOUSE,
P.O. PURATHUR, TIRUR TALUK,
MALAPPURAM DISTRICT.

BY. ADV. SRI. NIRMAL V.NAIR

RESPONDENTS:-

1. STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, KOCHI - 682031.
2. EXCISE INSPECTOR, TIRUR EXCISE RANGE OFFICE, TIRUR, MALAPPURAM DISTRICT, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, KOCHI - 682031..

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:

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P.V.KUNHIKRISHNAN, J

B.A.No. 2800 of 2020

Dated this the 15th day of May, 2020

ORDER

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No. 36 of 2020 of Tirur Excise Range. The above case is registered against the petitioner alleging offence punishable under Section 55(g) of the Abkari Act.

3.The prosecution case is that the petitioner was found in possession of 20 litres of wash.

4. The counsel for the petitioner submitted that, the contraband article is not seized from the physical possession of the petitioner and there is no material to show that the petitioner was in conscious possession of

the contraband article. The counsel for the petitioner also submitted that he is in custody from 03.05.2020 onwards.

5.The learned Public Prosecutor opposed the Bail Application. The Public Prosecutor submitted that, huge quantity of material is seized from the petitioner, which is used for manufacturing illicit arrack. The Public Prosecutor also submitted that the petitioner was arrested only on 03.05.2020

6. Considering the facts and circumstances of this case, I think, I am not in a position to allow this Bail Application. When the Public Prosecutor opposed the Bail Application, Section 41A give certain limitation to the Court to grant bail. I am not in a position to say at this stage that, the petitioner has not committed the offence and he will not commit similar offence in future. In the said circumstances, I am not in a position to allow this

Bail Application. Hence, this Bail Application is dismissed.

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

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is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

P.V.KUNHIKRISHNAN, JUDGE

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