

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.2805 OF 2020

(In Crime No: 444 of 2020 of Thenmala Police Station, Kollam district)

Petitioner/Accused:-

Muhammed Niyas.F, aged 19 years, S/o Fasiludeen, residing at Jaleela Manzil, Pattayamkoppu, Edamon Village, Ayiranalloor, Punalur Taluk, Kollam District, Pin- 691312

By Sri.J.R.Prem Navaz

Respondent/State & I.O:-

1. State of Kerala, Represented by the Public Prosecutor, High Court of Kerala, Ernakulum, 682 031.
2. The Sub Inspector of Police, Thenmala Police Station, Kollam 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. 2805 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.444/2020 of Thenmala Police Station registered alleging offences punishable under Section 8(1)(2) of the Abkari Act. The Petitioner was arrested on 29.04.2020 and he is in custody.

3. The prosecution case is that the petitioner was found in possession of 1 liter of illicit arrack.

4. The counsel for the petitioner submitted that the petitioner is ready to abide any conditions, if this Court grant bail to him. He is in custody for the last several days.

5. The learned Public Prosecutor submitted that, if this Court is granting bail, stringent conditions may be

imposed.

6. After hearing both sides, considering the fact that the petitioner is in custody from 29.04.2020 and also considering the quantity of the contraband seized and also based on the submission of the Public Prosecutor, this Bail Application is allowed.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in **Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020)** and a Full Bench of this Court in **W.P(C)No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in **Chidambaram. P v Directorate of Enforcement (2019 (16) SCALE 870)**, after considering all the earlier judgments, observed that, the basic jurisprudence

relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The Superintendent of Jail concerned where the petitioner is incarcerated is directed to release the petitioner on bail on executing a self bond ensuring that they will appear before the Court concerned as and when required. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number, the address at which the petitioner would be residing after his release.

3. The Superintendent of Jail concerned, immediately after release of the

petitioner will forthwith forward the bail bond obtained from the petitioner to the jurisdictional Court.

4. The petitioner immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where he is going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner do not violate the terms of the undertaking.

5. The petitioner shall appear before the Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

6. The petitioner shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like

sum to the satisfaction of the jurisdictional Court.

7. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing in the wake of declared lock-down.

8. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.

Sd/-

**P.V.KUNHIKRISHNAN,
JUDGE**

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