

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 06TH DAY OF MAY 2020 / 16TH VAISAKHA, 1942

**B.A.TMP NO.106 OF 2020**

(Crime No.75 of 2020 of Hosdurg Excise Range, Kasaragod)

**Petitioner/Accused No.2**

Maneesh Mathew, aged 33 years,  
S/o.Mathew,  
R/at Mundatharayil House, Cherikkund,  
Malakkallu.P.O, Vellarikkund Taluk, Kasaragod District.

By Adv.Sri.Arunkumar.A

**Respondents/Complainant/ State:**

1. State of Kerala – represented by Public Prosecutor  
High Court of Kerala, Ernakulam – 682 031.
2. The Excise Inspector,  
(Crime No.75 of 2020 of Hosdurg Excise Range  
Kasaragod District.).

**BY P.P.SRI.AJITH MURALI & SANTHOSH PETER(SR)**

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON  
06.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.V.KUNHIKRISHNAN, J.**

-----  
B.A.TMP No.106 of 2020  
-----

Dated this the 6<sup>th</sup> 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 2<sup>nd</sup> accused in Crime No.75 of 2020 of Hosdurg Excise Range registered alleging offences punishable under Sections 55(g), 8(1) and (2) of the Abkari Act.

3.The prosecution case is that on 15.04.2020, at 2.45 pm at Malakkallu in Kallar the Excise Officials have found 105 liters of wash and 8 liters of arrack at the work area of the house of the 1<sup>st</sup> accused. It is alleged that the petitioner is not involved in the case.

4. The counsel for the petitioner submitted that he is innocent and he is not involved in this case.

5.The learned Public Prosecutor opposed the bail application. He submitted that huge amount of wash is seized

and this is not a fit case in which the extraordinary jurisdiction under Section 438 of the Cr.P.C. is exercised. Section 41 (a) of the Abkari Act says that if the prosecutor opposed the bail application, the court cannot grant bail unless there is reason to believe that the petitioner has not committed the offence and he will not commit similar offences. In this case I am not in a position to say that the petitioner has not committed any offence.

6. After hearing both sides, according to me, this is not a fit case, in which the extraordinary jurisdiction under Section 438 of the Cr.P.C. can be invoked.

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**

YKB