

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.112 OF 2020

(IN OR NO. 39 /2020 OF NILAMBUR EXCISE IN MALAPPURAM DISTRICT)

PETITIONER/ 1ST ACCUSED.

AHAMMED KOYA, AGED 62 YEARS, S/O ALAVI, THOTTANCHERI HOUSE,
MAMPAD PO, NILAMBUR TALUK, MALAPPURAM DISTRICT.

BY ADV.P.SAMSUDIN

RESPONDENTS/STATE /COMPLAINANT

1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA ERNAKULAM - 682 031.
2. EXCISE INSPECTOR, NILAMBUR EXCISE, NILAMBUR, MALAPPURAM
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. 112 of 2020

Dated this the 6th day of May, 2020

ORDER

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

2. The petitioner is the accused in O.R.No.39/2020 of Nilambur Excise Range registered alleging offences punishable under Section 55(g) of the Kerala Abkari Act.

3. The prosecution case is that, on 13.4.2020 at 1.30 pm, while the Excise party were conducting patrolling, they got information that huge quantity of wash was kept in a shed in the rubber estate at Aruvakode in Nilambur. On conducting search, 100 litres of wash and utensils were found kept in the shed. The prosecution case is that, the petitioner is also involved in this case.

4. The counsel for the petitioner submitted that he is not at all involved in this case. He also submitted that the contra

band article is seized from an open space. He is not the owner of the property. He also contended that the case is registered because of some enmity against the petitioner.

5. The learned Public Prosecutor opposed the bail application. He submitted that, the contra band seized are manufacturing materials, and this Court may not grant bail under Section 438 of the Cr.P.C.

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. Section 41A of the Abkari Act says that, if the Public Prosecutor opposes the bail application, this Court can grant bail only if it is convinced that the petitioner has committed the offence, or and he will not commit similar offence. I am not in a position to conclude at this stage that the petitioner has not committed the offence.

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

MMG