

B.A. TMP NO.117 OF 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 29TH DAY OF APRIL, 2020/9TH VAISAKHA, 1942

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(Crime No. 344/2020 of Elathoor Police Station, Kozhikode District)

Petitioner/ Accused:-

Rajesh.K.V.,aged 38 years,
S/o Muthorankutty,
Residing at Kakkattuvayal House,
Edakkad, Kunduparamb,
Elathoor, Kozhikode District;

BY Adv.P.P.Biju
Adv.M.S.Dileep

Respondents/ State & Complainant:-

1. State of Kerala, Represented by Public Prosecutor,
High Court of Kerala, Ernakulam-682 031.

2. The Circle Inspector of Police,
Elathoor Police Station, Elathoor, Kozhikode.

BY PUBLIC PROSECUTOR SRI.E.C BINEESH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
29.04.2020, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

O R D E R

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the accused in Crime No.344 of 2020 of the Elathoor Police Station. The petitioner is alleged to have committed the offences punishable under Sections 8(2) and 55(g) of the Kerala Abkari Act.

3. The prosecution case, in brief, is that: on 13.4.2020, while the Excise party was on patrolling duty, they found 500 ml of arrack in the bedroom of the petitioner. On a further search conducted by the Excise party, they also found 40 litres of wash concealed in the south-western corner of the petitioner's residential premises. Thus, the petitioner has committed the above offence.

4. The petitioner was arrested on 13.4.2020. His application for bail was dismissed by the Judicial First Class Magistrate Court -I, Koyilandi, by order dated 15.4.2020 in C.M. P. No.1 of 2020.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioner argued that the petitioner has been falsely implicated in the above crime. The petitioner has not committed the offences alleged in the FIR. Petitioner is the sole breadwinner of his family and hence he may be enlarged on bail.

7. The learned Public Prosecutor opposed the bail application and contended that investigation is in progress and the petitioner may not be enlarged on bail.

8. The Hon'ble Supreme Court in ***Sanjay Chandra v. CBI*** [2012 (1) SCC 40] held as follows:

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution".

9. Recently, the Honourable Supreme Court in ***Nikesh Tarachand Shah v. Union of India*** [2018 (11) SCC 1] after going back to the days of the Magna Carta and after referring to *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565] has reiterated the

same view in **Sanjay Chandra v. CBI (supra)**. Again, in **P.Chidamabram v. Directorate of Enforcement** [(2019) SCC Online SC 1549] the above proposition has been fortified.

10. After the outbreak of the Novel Corona Virus (COVID -19) pandemic in the country, the Hon'ble Supreme Court in In Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition (C) No.1 of 2020) observed that the issue of overcrowding of prisons is a matter of serious concern. The State Governments were directed to take adequate measures to de-congest the prisons. Following the above direction, the Home Department, Government of Kerala has promulgated order dated 25.03.2020, *inter alia*, directing the release of under-trial prisoners alleged to have committed offences punishable with punishment for seven years or less. Later, a Full Bench of this Court by order dated 25.03.2020 in W.P.(C) No.9400 of 2020 (Suo Motu), has issued directions to de-congest the prisons in the State, keeping in mind the proposition that bail is the rule and jail is the exception.

11. Having regard to the facts and circumstances of the case, particularly the fact that the petitioner has been in custody since 13.4.2020, which is now 16 days; that investigation in the case is

practically completed; that no further recovery has to be effected; that there is no circumstances denying the petitioner bail; that the directions laid down by the Honourable Supreme Court in the afore cited decisions and also the directions of the Hon'ble Supreme Court and also Full Bench of this Court to de-congest prisons in view of Covid-19 pandemic, I am inclined to allow this bail application.

12. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down and the closure of Courts, the Jail Superintendent, where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The petitioner shall also file an undertaking to the Jail Superintendent that he and his sureties will execute the bail bond before the jurisdictional Court within one week of its re-opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the Station House Officer of the Police Station where the crime

has been registered, who shall after noting down the above details, release the petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner shall within one week from the re-opening of the jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer on all Tuesdays and Saturdays between 10.00 a.m and 11 a.m till final report is filed.

(iv) The petitioner shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioner shall not commit any offence while on bail.

(vi) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

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(vii) Needless to mention that, if the petitioner violates any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail.

C.S.DIAS, JUDGE

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