

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 05TH DAY OF MAY 2020 / 15TH VAISAKHA, 1942

BA TMP.NO.134 OF 2020

**Crime. No. 116/2019 of Excise Enforcement and Anti Narcotic
Special Squad, Palakkad.**
(S.C.No.128/2020 of the Court of Session, Palakkad Division)

PETITIONERS/Accused Nos.1 and 2:

1. Amal.K.S, aged 23 years,
S/o.Suresh, Kariyil House,
CSEZ P.O, Thuthiyur, Vazakkala,
Kanayannur, Ernakulam.
2. Prajith, aged 22 years,
S/o.Uthaman, Kovath Parambil Veedu,
Thaikkav Rotary Colony, Cheranelloor,
Kanayannur, Ernakulam.

By Adv. Sri.Johnson Varikkappalil

Respondents/State & Complainant:

1. State of Kerala, represented by
Public Prosecutor, High Court of
Kerala, Ernakulam-682031.
2. Assistant Commissioner of Excise,
Excise Enforcement and Anti
Narcotic Special Squad, Palakkad-678001.

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

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
05.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TMP. No.134 of 2020

Dated this the 5th day of May, 2020

O R D E R

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

2. Petitioners are the accused in Crime No.116 of 2019 of Excise Enforcement and Anti Narcotic Special Squad, Palakkad, registered alleging offences punishable under Sections 20(b)(ii)B and Section 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985. Petitioners were arrested on 12.12.2019 and they are in custody.

3. The prosecution case is that the petitioners are in possession of 6Kg of Ganja each (12Kg of Ganja). Petitioners were arrested on 12.12.2019

4. The counsel for the petitioners submitted that the petitioners have no criminal antecedents and they are in custody from 12.12.2019 onwards.

5. The learned Public Prosecutor submitted that the quantity of Ganja seized is 12 Kg. The learned Public Prosecutor further submitted that if this Court grant bail to the petitioners stringent conditions may be imposed.

6. After hearing both sides, I think this bail application can be allowed. Considering the fact that the petitioners are in custody from 12.12.2019, onwards and also in the light of the fact they have no criminal antecedents.

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 petitioners are incarcerated is directed to release the petitioners on bail on executing a self bond ensuring that they will appear before the Court concerned as and when required, if they are not in detention in

any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioners as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioners would be residing after their release.

3. The Superintendent of Jail concerned, immediately after release of the petitioners will forthwith forward the bail bond obtained from the petitioners to the jurisdictional Court.

4. The petitioners immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish their phone number and the place where they are going to reside. The Station House Officer concerned

shall keep a vigil on the whereabouts of the petitioners and shall ensure that the petitioners does not violate the terms of the undertaking.

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

6. The petitioners 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 petitioners shall strictly abide by

the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

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

P.V.KUNHIKRISHNAN, JUDGE

VPK