

BAIL APPL.No.158 of 2020

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 28TH DAY OF APRIL, 2020 /8TH VAISAKHA, 1942

BAIL APPL.No.158 of 2020

CRIME NO 459/2020 OF ARTHUNGAL POLICE STATION POLICE  
STATION, ALAPPUZHA DISTRICT

PETITIONERS/ACCUSED:

- 1) PIOUS, AGED 39 YEARS,  
S/O ANTONY, ARESSERRY VEEDU, WARD NO. 3,  
MARARIKULAM NORTH PANCHAYTH, CHERTHALA, ALAPPUZHA.
- 2) MICHAEL, AGED 34 YEARS,  
S/O OUSEPH, PALLIKKATHARAYIL VEEDU, WARD NO.1,  
MARARIKULAM NORTH PANCHAYTH,  
CHERTHALA, ALAPPUZHA.
- 3) SHINO, AGED 26 YEARS, S/O SEBASTIAN, ARESSERIL HOUSE,  
WARD NO. 3, MARARIKULAM NORTH PANCHAYTH, CHERTHALA,  
ALAPPUZHADISTRICT

BY ADV.A.ABDUL JALEEL  
RESPONDENTS/COMPLAINANT

1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE/ SHO, ARTHUNGAL POLICE  
STATION, CHERTHALA, ALAPPUZHA DISTRICT.

BY PUBLIC PROSECUTOR SRI.BINEESH E.C.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
28.04.2020, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**ORDER**

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

2. The petitioners are accused 1 to 3 in Crime No.459 of 2020 of the Arthungal Police Station. The petitioners are alleged to have committed the offences punishable under Section 55(g) of the Kerala Abkari Act.

3. The prosecution case, in brief, is that: the petitioners were found in possession of 25 litres of arrack which was stored in a container on the terrace of one Antony. The Excise party on getting information about the crime, seized the contraband article from the said place of occurrence. The petitioners are the ones who have manufactured the wash for the purpose of distilling arrack. Thus, the petitioners have committed the above offences.

4. The petitioners were arrested on 10.04.2020. The petitioners' application for bail was dismissed by the learned Magistrate.

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

6. The learned counsel for the petitioners argued that the petitioners are fishermen by profession. The petitioners are innocent of the accusation leveled against them. No contraband articles have been seized from the possession of the petitioners. The petitioners have been implicated in the crime, for the reasons only known to the police. The petitioners do not have any criminal antecedents. Hence, the petitioners may be enlarged on bail.

7. The learned Public Prosecutor opposed the application.

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 decongest 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 petitioners have been in incarceration for the last 18 days; that the investigation in the case is practically complete; that the petitioners' continued detention is unnecessary; the legal proposition laid down by the Honourable Supreme Court in the afore cited decisions; and the directions of the Hon'ble Supreme Court and a Full Bench of this Court to decongest 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 petitioners are incarcerated, is directed to release the petitioners on them furnishing their permanent addresses and phone numbers and the addresses and phone numbers of their proposed sureties/immediate relatives. The petitioners shall also file an undertaking to the Jail Superintendent that they and their 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 petitioners 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 petitioners. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioners.

(ii) The petitioners shall within one week from the re-opening of the jurisdictional Court, if not

already re-opened, execute bonds for a sum of Rs.1,00,000/- (Rupees one lakh only) each, with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioners shall appear before the Investigating Officer on all Wednesdays 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 petitioners shall not commit any offence while on bail.

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

(vii) Needless to mention that, if the petitioners violate any of the above conditions, the Station House Officer shall be at liberty to approach the

BAIL APPL.No.158 of 2020

8

jurisdictional Court and file appropriate application  
seeking for cancellation of the bail.

**C.S.DIAS, JUDGE**

kkj