

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

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

B.A.TMP NO.188 OF 2020

(Crime No. 75/2019 of Hosdurg Excise Range, Kasaragod District)

Petitioner/Accused No.1:

Nixon Joseph, aged 49 years,
S/o. Joseph K.J., Kaduthodil House,
Malakallu Desom, Kallar Village,
Vellarikkund Taluk, Kasaragod District.

BY ADV.JACKSON JOHNY

Respondents/ State & Complainant:

1. State of Kerala – Represented by Public Prosecutor,
High Court of Kerala, Ernakulam. Pin- 682031.
Emailid : bacases2ago@gmail.com
2. The Station House Officer,
(Crime No. 75/2019 of Hosdurg Excise Range)
Kasaragod District – 671531
Email id : erohsd.exc@kerala.gov.in

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.188 of 2020

Dated this the 6th 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 accused in Crime No.75 of 2019 of Hosdurg Police Station registered alleging offences punishable under Sections 55(g) and 8(1) and 8(2) of the Kerala Abkari Act.

3. The prosecution case is that on 15.4.2020 at about 2.45 pm, the Preventive Officer, Hosdurg Excise Range conducted inspection and found 8 liters of arrack and 105 liters of wash from the thodu premises near the residence of the accused. The prosecution alleged that the petitioner is involved in this case.

4. The counsel for the petitioner submitted that no contraband article is seized from his physical possession and he is innocent. He is ready to abide by any condition.

5. The learned Public Prosecutor opposed the bail application

and submitted that the petitioner committed serious offence. The allegation is that he manufactured illicit arrack.

6. Section 41A of the Abkari Act says that if the Public Prosecutor opposed the bail application, this Court can grant bail only if the court is convinced that no prima facie case is made out against the accused and the court is convinced that he will not commit similar offences. I am not in a position to conclude at this stage that the petitioner has committed any offence. In the light of the bar under Section 41A of the Abkari Act, I am not in a position to entertain the bail application.

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**

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