

BA TMP 191 of 2020

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.TMP 191 OF 2020

CRIME NO 342/ 2020 OF THRIKKUNNAPPUZHA POLICE STATION,

ALAPPUZHA DISTRICT

PETITIONER/ACCUSED 1 & 2:

1. SHRI. BENSILAL, AGED 40 YEARS,
S/O CHELLAPPAN, PULLUKKATTIL HOUSE,
MAHADEVIKAD MURI, THRIKKUNNAPPUZHA VILLAGE,
KARTHIKAPPALLY TALUK,
ALAPPUZHA DISTRICT, PIN CODE: - 690 516.
2. SHRI. SUNEESH, AGED 36 YEARS,
S/O SURENDRAN, KOOTTUMTHARA THEKKATHIL HOUSE,
MAHADEVIKAD MURI, THRIKKUNNAPPUZHA VILLAGE,
KARTHIKAPPALLY TALUK,
ALAPPUZHA DISTRICT, PIN CODE: - 690 516.

BY ADV. ARUN CHANDRAN

RESPONDENTS/COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT CAMPUS, ERNAKULAM. 682 031.
2. THE STATION HOUSE OFFICER,
THRIKKUNNAPPUZHA POLICE STATION,
ALAPPUZHA DISTRICT,
PIN CODE: - 690 515.

BY PUBLIC PROSECUTOR SRI.AJITH MURALI

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 the accused 1 and 2 in Crime No.342/2020 of Thrikkunnappuzha Police Station. The petitioners are alleged to have committed the offences punishable under Secs 8(1) and (2) of the Kerala Abkari Act read with Sec.34 of the Indian Penal Code.

3. The prosecution case, in brief, is that: on 5.4.2020, the Police found the petitioners in possession of 3.300 litres of country made arrack, which they had distilled for the purpose of sale. Thus, the petitioners have committed the above offences.

4. The petitioners were arrested on 5.4.2020. Their application for bail was dismissed by the Judicial First Class Magistrate-I, Haripad.

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

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the petitioners are absolutely innocent of the accusations levelled against them. The petitioners are unaware of the circumstances in which they have been falsely implicated in the above case. They do not have any criminal antecedents. The investigation in the case is practically complete. The petitioners' continued detention is unnecessary. 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

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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

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case, particularly the fact that the petitioners have been in incarceration for the last 23 days; that the investigation as against the petitioners is almost complete; that the petitioners' continued detention is unnecessary; that the petitioners have no criminal antecedents; the legal proposition laid down by the Honourable Supreme Court in the aforecited decisions; 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 address and phone number 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 a bond 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 Tuesdays and Saturdays between 10.00 a.m and 11 a.m till final report is filed.

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(iv) The petitioners 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 jurisdictional Court and file appropriate application seeking for cancellation of the bail.

C.S.DIAS
JUDGE

sks/28.4.2020

