

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.194 OF 2020

(Crime. No. 111/2020 of Mangalam Dam Police Station, Palakkad District.)

Petitioners/Accused Nos. 1 to 3:

1. Shibu, aged 40 years, S/o.Kuttappan,
Kunniniyil House, Chalamattam,
Konippad.P.O, Kottayam.
2. Sunny Joseph, aged 45 years,
S/o.Joseph, Manayil Veedu, Olippara,
Olimkadavu.P.O, Palakkad.
3. Jacob, aged 54 years, S/o.Chერიან,
Aalinkal House, Olippara,
Olimkadavu.P.O, Palakkad.

By Adv.Sri.Johnson Varikkappallil

Respondent/Complainant:

1. State of Kerala, represented by
Public Prosecutor, High Court of
Kerala, Ernakulam-682031.
2. The Sub Inspector of Police,
Mangalam Dam Police Station,
Mangalam Dam.P.O, Palakkad-678508.

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.194 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. Applicants are the accused nos.1 to 3 in Crime No.111 of 2020 of Mangalam Dam Police Station, Palakkad District registered alleging offences punishable under Section 55(g) of the Kerala Abkari Act. The 1st applicant was arrested on 11.4.2020 and 2nd and 3rd applicants were arrested on 17.4.2020 and they are in custody.

3.The prosecution case is that on 10.4.2020 at 22.30 hours, the accused were found in possession of

300 litres of Wash for the purpose of manufacturing illicit Arrack in contravention of Abkari Act.

4. The learned counsel for the applicants submitted that the accused is in custody from 11.4.2020 and 17.4.2020 respectively. The alleged contraband already seized. The applicants have not committed the offence. The learned counsel for the applicants also submitted that the applicants are ready to abide any conditions if this court grant bail.

5. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that huge quantity of Wash is recovered from the applicants and they were in possession of the same for the purpose of manufacturing illicit Arrack. Section 41A of Abkari Act says that, if the Public Prosecutor opposed the bail application, the court can grant bail only if it is convinced that the applicants have not

committed the offence and they will not commit similar offences. I am not in a position to conclude at this stage that the applicants have not committed the offence. Moreover, the applicants were custody only from 11.4.2020 and 17.4.2020. They were found in possession of Wash which is a material for manufacturing illicit Arrack. At this stage the applicants are not entitled to bail.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted.

7. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)** the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the

severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant 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 applicants can be released on bail. Hence this Bail Application is dismissed.

**P.V.KUNHIKRISHNAN,
JUDGE**

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