

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.206 OF 2020

(Crime No.27 of 2020 of Irinjalakuda Excise Range, coming within the Jurisdiction of JFCM, Irinjalakuda, Thrissur District)

Petitioner/Accused

Shanu, aged 34, S/o.Sulthan, Alappuzhakkaran House, Kodaly Desom, Mattathur Village, Chalakudy Taluk, Thrissur District,

By Adv.Sri.Bitto.N.L.

State of Kerala/Complainant

1. The State of Kerala, rep. by the Public Prosecutor, High court of Kerala at Ernakulam.
2. Excise Inspector of Police, Irinjalakuda Excise Range, Irinjalakuda P.O., Mukundapuram Taluk, Thrissur district

By Public Prosecutor SRI.AJITH MURALI & SRI.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.206 of 2020

Dated this the 5th 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 sole accused in Crime No.27 of 2020 of Irinjalakuda Excise Range. The above case is registered against the petitioner alleging offence punishable under Section 55(g) of the Kerala Abkari Act. The petitioner was arrested on 2.4.2020.

3. The prosecution case is that, on 2.4.2020 at about 11.45 am., 200 litres of wash and utensils to distill the same was found by the Excise Inspector in the house of the petitioner at Kodaly.

4. The counsel for the petitioner submitted that he has not committed the offence. He is ready to abide any condition if this Court grant bail to him.

5. The learned Public Prosecutor opposed the bail application and submitted that huge quantity of wash was recovered from the house of the petitioner. Therefore, the petitioner is not entitled for bail.

6. After hearing both sides, according to me, this is not a fit case to invoke the extraordinary jurisdiction under Section 438 of the Cr.P.C. Huge quantity of wash, which is a material used for manufacturing illicit liquor, is seized from the house of the petitioner.

7. Section 41A of the Abkari Act says that, if the learned Public Prosecutor opposed the bail application, the Court can grant bail only if the court found that the petitioner has not committed the offence and he will not commit similar offence in future. I am not in a position to conclude, whether the petitioner committed the offence or not at this stage. Hence the petitioner is not entitled for bail.

8. 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 circumstance exists to resort to the extraordinary jurisdiction.

9. 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

skj