

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.222 OF 2020

(CRIME NO.123/2020 OF SHORNUR POLICE STATION, PALAKKAD DISTRICT.)

PETITIONER/ACCUSED:

LAL KRISHNAN, AGED 29 YEARS,
S/O.RAMACHANDRAN,
CHINNAKATHODI HOUSE,
KANAYAM KULAPPULLY,
SHORNUR, PALAKKAD DISTRICT.

BY ADV. SRI. NIREESH MATHEW

RESPONDENT/COMPLAINANT:

STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

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. 222 of 2020

Dated this the 5th day of May, 2020

ORDER

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. The petitioner is the accused in Crime No. 123/2020 of Shornur Police Station, Palakkad, registered alleging offences punishable under Section 55(a) of the Abkari Act, Section 118(e) of the Kerala Police Act and Section 4(2)(d) and (v) of the Kerala Epidemic Diseases Ordinance, 2020. The petitioner was arrested on 11.4.2020 and he is in custody.

3. The prosecution case is that , on 11.4.2020 at about 6.30 pm, the petitioner being the driver of the car bearing Reg. No. KL-51/A-8708 was found in

possession of 8 litres of Indian Made Foreign Liquor(IMFL) without any authorization.

4. The counsel for the petitioner submitted that, even if the prosecution case is accepted, the possession is of Indian Made Foreign Liquor(IMFL), which is not a prohibited item. Moreover, he submitted that the offence under Section 55(a) of the Abkari Act is not attracted. At the maximum, he can be prosecuted only for possessing excess quantity of IMFL.

5. The learned Public Prosecutor submitted that if this Court is releasing the petitioner, stringent conditions may be imposed.

6. After hearing both sides, and after considering the facts of the case that the petitioner was found in possession of IMFL in excess quantity and he was in custody from 11.4.2020, I think this bail application can be allowed.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the

spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in **Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020)** and a Full Bench of this Court in **Writ Petition(C) No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in **Chidambaram P. v. Directorate of Enforcement (2019 (16) SCALE 870)**, after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the

following directions:

1. The Superintendent of Jail concerned where the petitioner is incarcerated is directed to release the petitioner on bail on executing a self bond ensuring that he will appear before the Court concerned as and when required if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioner would be residing after his release.

3. The Superintendent of Jail concerned, immediately after release of the petitioner will forthwith forward the bail bond obtained from the petitioner to the jurisdictional Court.

4. The petitioner immediately after

release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where he is going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner does not violate the terms of the undertaking.

5. The petitioner shall appear before the Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

6. The petitioner shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with

two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

8. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE