

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.228 OF 2020

( Crime No: 1/2019 Excise Circle office, Thiruvananthapuram District)

**Petitioner/Accused No.1**

Sadik,  
aged 40 years,  
S/o Muhammed Anees,  
Nagar, Thondi, Thiruvandanai, Taluk,  
Ramanadhapuram, Tamil Nadu

By Advs.Sri.P.K.Varghese  
Sanjana Rachel Jose

**Respondent/Complainant**

State of Kerala,  
Represented by the Public Prosecutor,  
High Court of Kerala, Ernakulam-682031.

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.**

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B.A.TMP.No.228 of 2020  
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Dated this the 5<sup>th</sup> 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. The petitioner is the 1<sup>st</sup> accused in Crime No.1/2019 of Excise Circle Office, Thiruvananthapuram. The above case is registered against the petitioner alleging offences punishable under Sections 20(b)(ii)(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act. The petitioner is in custody from 19.1.2019 onwards.

3. The prosecution case is that, on 19.1.2019 at 12.45 pm., the petitioner/the 1<sup>st</sup> accused along with the 2<sup>nd</sup> accused were found in possession and transportation of 10.984 Kgs. of hashish oil.

4. The learned counsel for the petitioner submitted that the petitioner is in custody from 19.1.2019 onwards. He has

not committed the offence. He is ready to abide any condition, if this Court grant bail.

5. The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that huge quantity of hashish is seized from the petitioner and he committed very serious offence.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. The petitioner is in custody only from 19.1.2019. Huge quantity of hashish oil is seized. The jurisdiction of this Court to entertain a bail application under the NDPS Act is very limited. When the learned Public Prosecutor opposed the bail application, this Court can grant bail only if this Court found that the petitioner has not committed the offence and he will not commit the offence in future. I am not in a position to conclude at this stage that the petitioner has not committed the offence.

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 petitioner can be released on bail. Hence this Bail Application is dismissed.

**P.V.KUNHIKRISHNAN, JUDGE**

skj