

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 5TH DAY OF MAY, 2020 / 15TH VAISAKHA, 1942

B.A. TMP No. 253 / 2020

(In the matter in Crime no.163/2020 of Varantharappilly Police station,
Thrissur District)

Petitioners/Accused

Biju, aged 42 years, S/o Devassykutty,
Ambazhakkadan House,
Puliyankunnu Desom, Mupliyam Village,
Varantharappilly,
Thrissur District.

By Adv. Sri.Rajesh Chakyat.

Respondent/Complainant:

- 1. The State of Kerala, Rep by the Public Prosecutor,
High Court of Kerala.
- 2. The Sub Inspector of Police,
Varantharappilly Police station,
Thrissur district. Rep by the public Prosecutor,
- High Court of Kerala.

SRI.AJITH MURALI, PP

SRI.SANTHOSH PETER, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
05.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.TEMP.No.253 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. Petitioner is the accused in Crime No.163 of 2020 of Varantharappilly Police Station registered alleging offences punishable under Sections 8(1) and (2) and Section 55(g) of Kerala Abkari Act. Petitioner was arrested on 3.4.2020 and he is in custody.

3. The prosecution case is that the petitioner was found in possession of 180 liters of wash and 60 ml of arrack.

4. The counsel for the petitioner submitted that he is in custody from 3.4.2020 onwards. He also submitted that even as per the prosecution case, only 60 ml of arrack is seized and moreover according to the prosecution only wash is seized and no utensils are seized.

5.The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that the petitioner was in

possession of wash, which is a material for manufacturing illicit arrack.

6. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

7. It is an admitted fact that the petitioner is in custody from 3.4.2020. It is also an admitted fact that the petitioner was in possession of only 60 ml of arrack. It is true that there is an allegation of the prosecution that the petitioner was found in possession of 180 liters of wash. But no evidence is there as on now to show that the petitioner was manufacturing illicit arrack. Moreover, the learned counsel for the petitioner submitted that the third son of the petitioner is suffering from cancer and he is a physically challenged child.

8. Considering the facts and circumstances of the case, I think that the petitioner can be released on bail by imposing stringent conditions.

9. 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 **W.P(C)No.9400 of**

2020 issued various salutary directions for minimizing the number of inmates inside prisons.

10. 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.

11. 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 their 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 do 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 to law, even though the bail is granted by this Court.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**