

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. 275 / 2020

(CRIME NO: 365/20 OF KANAKAKUNNU POLICE STATION, ALAPPUZHA DISTRICT)

PETITIONER/ACCUSED

Anil Kumar, aged 47 years,
S/o Karthikeyan
Haripriyam, Ambady Junction
Kandalloor, Alappuzha

By Adv Sri R. Sunil Kumar
Smt A. Salini Lal
Sri Arun Krishna

RESPONDENTS/COMPLAINANTS

1. State of Kerala, represented by the Public Prosecutor
High Court of Kerala, Ernakulam, Kochi-682031
2. The Sub Inspector of Police, Kanakakunnu Police Station
Alappuzha District

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.TMP.No.275 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.365 of 2020 of Kanakakkunnu Police Station registered alleging offences punishable under Section 8(1)(2) and 55(g) of the Abkari Act. Petitioner was arrested on 08.04.2020 and he is in custody.

3.The prosecution case is that the petitioner was found in possession of 7.5 litres of wash and 500ml arrack.

4. The counsel for the petitioner submitted that he is in custody from 08.04.2020. He also submitted that there is no criminal antecedents.

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

6. Considering the fact that the petitioner is in custody from 08.04.2020 and the small quantity of contraband alleged to be seized from the petitioner, and of course, considering the fact that the petitioner is not having any criminal antecedents, I think bail can be granted to the petitioner.

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 **W.P(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 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 with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE