

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. 283 / 2020

(Under Section 439 of the Code of Criminal Procedure, 1973
in
Crime No. 19 of 2020 of Achankovil Police Station, Kollam)

PETITIONERS/ACCUSED No. 1 & 2:

1. Maniyan Pillai @ Murikkayyan Maniyan,
Age 66 years, S/o Narayana Pillai, Suresh Bhavan, Achankovil,
Aryankavu- 691309.
2. Vilasini, Age 66, W/o Maniyan Pillai, Suresh Bhavan, Achankovil,
Aryankavu- 691309.

BY Adv. Achuth Kylas

RESPONDENTS/COMPLAINANTS:

1. State of Kerala,
Represented by Public Prosecutor,
High Court of Kerala, Ernakulam- 682031.
2. The Station House Officer,
Achankovil Police Station, Yeroor, Kollam – 691308.

SRI. AJITH MURALI, PP
SRI. SANTHOSH PETER

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.283 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. Petitioners are the accused in Crime No.19 of 2020 of Achankovil Police Station, Kollam, registered alleging offences punishable under Sections 8(1) & (2) of Kerala Abkari Act. Petitioners were arrested on 17.04.2020 and they are in custody.

3. The prosecution case is that, 26 litres of arrack was stored in plastic bottles and cans were seized from a paramba near the house of the petitioners. Therefore, the petitioners were implicated in this case.

4. The counsel for the petitioner submitted that the contra band is not seized from the physical possession of the petitioners. Moreover, he also contended that he is in custody

from 17.04.2020. He is ready to abide any conditions imposed by this Court, if he is released on bail.

5. The learned Public Prosecutor opposed the bail application. He submitted that huge quantity of arrack is seized and the petitioners may not be released on bail at this stage.

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

7. The petitioners are the husband and wife. The arrack is not seized from the physical possession of the petitioners. The arrack is seized from the paramba near to the house of the petitioners. Whether the petitioners was in conscious possession of the illicit contraband is a matter to be decided in trial. I think, the continued detention of the petitioners are not necessary, especially, because they are in custody from 17.04.2020 onwards.

8. 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.

9. 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.

10. 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 petitioners are incarcerated is directed to release the petitioners on bail on

executing a self bond ensuring that they will appear before the Court concerned as and when required, if they are not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioners 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 petitioners would be residing after their release.

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

4. The petitioners immediately after release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish their phone

number and the place where they are going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioners and shall ensure that the petitioners does not violate the terms of the undertaking.

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

6. The petitioners 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 petitioners 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 petitioners, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

VPK