

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. 301 / 2020

(In Crime No: 134 of 2020 of Valancherry Police Station, Malappuram district, registered for the offences punishable under Section 8(1) r/w 8(2) of Abkari Act & under Section 4(2) (d) & 5 of Kerala Epidemic Ordinance.)

Between

Petitioners/Accused 1 to 3:-

- 1 Sasi, Aged 59 years S/o Velayudhan, residing at Kadhalikattil House, Edayur (PO), Malappuram District, Pin-676 552.
- 2 Sreedharan, Aged 42 Years, S/o Krishnan, Kunnakaparambil House, Edayur (PO), Malappuram District, Pin-676 552.
- 3 Ravi, Aged 48 Years, S/o Krishnan, Channethodi House, Edayur (PO), Malappuram District, Pin-676 552.

By Sri.J.R.Prem Navaz

Respondent/State & I.O:-

1. State of Kerala, Represented by the Public Prosecutor, High Court of Kerala, Ernakulum, 682 031.
2. The Sub Inspector of Police, Valancherry Police Station, Malappuram 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. 301 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 petitioners are the accused Nos. 1 to 3 in Crime No.134/2020 of Valancherry Police Station, Malappuram, registered alleging offences punishable under Sections 8(1) & 8(2) of the Abkari Act and Sections 4(2)(d) & 5 of the Kerala Epidemic Ordinance.

3. The prosecution case is that, on 14.4.2020, the accused was found in possession of 1.250 litres of illicit arrack. The petitioners were arrested on 14.4.2020 and they are in custody.

4. The counsel for the petitioners submitted that, the petitioners are in custody from 14.4.2020 onwards

and there are no criminal antecedents.

5. The learned Public Prosecutor opposed the bail application. He submitted that, if this Court grant bail, stringent conditions may be imposed.

6. After hearing both sides, and after considering the facts of the case, and the quantity of contraband seized from them, and also considering the duration of detention of the petitioners, I think bail can be granted. Hence, this bail application is 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 petitioners are incarcerated is directed to release the petitioners on bail on executing separate self bonds 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 numbers and the addresses 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 bonds 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 numbers 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 do 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 separate bonds 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

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