

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.306/ 2020

(IN CRIME NO: 423 OF 2020 OF QUILANDY POLICE STATION,  
KOZHIKODE DISTRICT, REGISTERED FOR THE OFFENCES PUNISHABLE  
UNDER SECTION 8(1) R/W 8(2) OF ABKARI ACT)

PETITIONERS/ACCUSED 1 & 2:-

- 1 SHIJU, AGED 39 YEARS, S/O CHATTUKUTY, RESIDING AT  
PALOLI HOUSE, NADERI P.O, QUILANDY, QUILANDY TALUK,  
KOZHIKODE DISTRICT, PIN-673 620.
- 2 PRAMOD, AGED 40 YEARS, S/O NARAYANAN NAIR, RESIDING AT  
ELAMKUNNATHU HOUSE, NADERI P.O, QUILANDY, QUILANDY  
TALUK, KOZHIKODE DISTRICT, PIN-673 620.

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, QUILANDY POLICE STATION,  
KOZHIKODE 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.**

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**B.A. TMP No. 306 of 2020**  
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**Dated this the 5<sup>th</sup> 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 1<sup>st</sup> & 2<sup>nd</sup> accused in Crime No.423/2020 of Quilandy Police Station, Kozhikode, registered alleging offences punishable under Sections 8(1) & 8(2) of the Abkari Act.

3. The prosecution case is that, on 23.4.2020, the 1<sup>st</sup> petitioner was found in possession of 2 litres of arrack and the 2<sup>nd</sup> petitioner was found in possession of 500 ml of arrack. The petitioners were arrested on 24.4.2020 and they are in custody.

4. The counsel for the petitioners submitted that, the petitioners are ready to abide by any conditions and their

further incarceration is not necessary in the facts and circumstances of the case.

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 fact that the petitioners are in custody from 24.4.2020 and the small quantity of contraband seized from them, I think, the petitioners can be released on bail. 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**

MMG