

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 05TH DAY OF MAY 2020 / 15TH VAISAKHA, 1942

BA TMP.NO.77 OF 2020

Excise O.R. No. 32 of 2020 of Excise Range Office, Anchal

PETITIONER/ACCUSED:

Rahul Raj, aged 28 years,
S/o Rajan, Suryavilasom veedu,
Urukunnu P.O. , Thenmala cillage, Kollam District- 691308.

By Adv. Achuth Kylas

RESPONDENTS/COMPLAINANTS:

1. State of Kerala,
Represented Public Prosecutor,
High Court of Kerala, Ernakulam- 682031.
2. Excise Inspector,
Excise Range Office, Anchal, Kollam District- 691306.

BY P.P. SRI.AJITH MURALI & SANTHOSH PETER(SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 05.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A. TMP. No.77 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 sole accused in O.R.No.32/2020 of Excise Range Office, Anchal. The above case is registered against the petitioner alleging offences punishable under Section 55 (g) of Abkari Act. Petitioner was arrested on 05.04.2020 and he is in custody.

3.The prosecution case is that the petitioner was found in possession of 770 liters of wash on 05.04.2020 at 12.30 p.m.

4. The counsel for the petitioner submitted that the petitioner was arrested on 05.04.2020 and almost 30 days over. According to him, he has not committed any offence.

5. The learned Public Prosecutor opposed the bail application. According to him, huge quantity of wash is seized from the possession of the petitioner and he was in possession of the same for manufacturing illicit liquor.

6. After hearing both sides, according to me, this is not a fit case, in which the bail can be granted. Section 41 A(b) (ii) of the Abkari Act says that, if the Public Prosecutor oppose the bail application, the court can grant bail only if it is satisfied that, there are reasonable grounds for believing that, he is not guilty of such offence and that he is not likely to commit any offence while on bail. I am not in a position to conclude at this stage that, the petitioner is not guilty of the offence. Moreover huge quantity of wash, which is a material for manufacturing illicit liquor is alleged to have been seized from the possession of the petitioner. He was in custody only from 05.04.2020.

7. Moreover, the jurisdiction to grant bail has to be exercised on the well settled principles

laid down by the Hon'ble Supreme Court in **Chidambaram P v Central Bureau of Investigation (AIR 2019 SC 5272)** the following factors are to be taken into consideration while considering the application for bail.

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

It is true that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail. Hence this Bail Application is dismissed.

P.V.KUNHIKRISHNAN, JUDGE

VPK