

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.88 OF 2020

(Crime 28 of 2020 of the Chalakudy Excise Range, Ccoming within the jurisdiction of the JFCM, Chalakudy, Thrissur District)

Petitioner/ Sole Accused :-

Joshy, aged 45, S/o. Cheriyan,

Pudussery Chamakkala House, Attappadam Desom,

Muringoor Thekkumuri Village, Chalakudy Taluk,

Thrissur District.

BY Adv.Sri.Bitto.N.L.

Respondent/State of Kerala:-

- 1. The State of Kerala,
rep. by the public Prosecutor High court of Kerala at
Ernakulam.**
- 2. Excise Inspector, Chalakudy Excise Range,
Chalakudy P.O., Chalakudy Taluk, Thrissur district**

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.88 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.28 of 2020 of the Chalakkudy Excise Range registered alleging offence punishable under Section 58 of the Kerala Abkari Act. Petitioner was arrested on 16.4.2020 and he is in custody.

3.The prosecution case is that the petitioner was found in possession of 18 litres of Indian made foreign liquor in a scooter on 16.4.2020.

4. The counsel for the petitioner submitted that the Indian made foreign liquor is not a prohibited item and moreover the offence under Section 58 of the Abkari Act may not attract. He can be punished only for possessing the excess quantity of Indian made foreign liquor.

5.The learned Public Prosecutor opposed the bail application. He

contended that the huge quantity of Indian made foreign liquor is seized from the petitioner.

6. After hearing both sides and considering the period of detention, I think that the petitioner can be released on bail. The allegation is that the petitioner was in possession of 18 liters of Indian made foreign liquor, which is not a prohibited item. He was in custody for about 19 days. Considering the facts and circumstances of the case, I think that the petitioner is entitled for bail, of course with some stringent conditions.

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 they are 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 to law, even though the bail is granted by this Court.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

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