

BA TMP 94 of 2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.S. DIAS

FRIDAY, THE 28TH DAY OF APRIL 2020/8TH VAISAKHA, 1942

Bail Application TMP No. 94 of 2020

**Crime No.49/2020 of Vatakara Excise Range, Kozhikode District**

**Petitioner/Accused:**

Rijeesh, aged 31 years, s/o Krishnan  
Kozhichalil house, Ayancheri  
Tharopoyil-Po, Vatakara Taluk  
Kozhikode district. PIN: 673 541  
By Sri. **P. V E N U G O P A L [V-481]**  
**T. J. MARIA GORETTI [M-961]**  
**Advocates**

**Respondents/State & Complainant:**

- 1 State of Kerala, represented by  
Public Prosecutor, High Court of  
Kerala, Ernakulam PIN: 682 031
- 2 Excise Inspector  
Vatakara Excise Range Office, Vatakara  
Kozhikode District. PIN:673 101

By Public Prosecutor Smt Pushpalatha M.K.

THIS B.A. HAVING BEEN FINALLY HEARD ON 28.04.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

## **ORDER**

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the accused in Crime No.49/2020 of Vatakara Excise Range. The petitioner is alleged to have committed the offence punishable under Sec.55(g) of the Kerala Abkari Act.

3. The prosecution case, in brief, is that: on 28.3.2020, the Excise officials found the petitioner in possession of 200 litres of Wash, which was seized from the petitioner's residential building. Thus, the petitioner has committed the above offence.

4. The petitioner was arrested on 28.3.2020. His application for bail was dismissed by the Sessions Court, Kozhikode by its order dated 8.4.2020.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioner argued that

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the petitioner has been falsely implicated in the above case. He is totally innocent of the accusations levelled against him. The petitioner has been in custody for the last 30 days. The investigation in the case is practically complete. No further purpose would be served the petitioner's continued incarceration. Hence, the petitioner may be enlarged on bail.

7. The learned Public Prosecutor opposed the application.

8. The Hon'ble Supreme Court in ***Sanjay Chandra v. CBI*** [2012 (1) SCC 40] held as follows:

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution".

9. Recently, the Honourable Supreme Court in ***Nikesh Tarachand Shah v. Union of India*** [2018 (11) SCC 1] after going back to the days of the Magna Carta and after referring to *Gurbaksh Singh Sibbia v. State of*

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Punjab [(1980) 2 SCC 565] has reiterated the same view in ***Sanjay Chandra v. CBI (supra)***. Again, in ***P.Chidamabram v. Directorate of Enforcement*** [(2019) SCC Online SC 1549] the above proposition has been fortified.

10. After the outbreak of the Novel Corona Virus (COVID -19) pandemic in the country, the Hon'ble Supreme Court in In Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition (C) No.1 of 2020) observed that the issue of overcrowding of prisons is a matter of serious concern. The State Governments were directed to take adequate measures to de-congest the prisons. Following the above direction, the Home Department, Government of Kerala has promulgated order dated 25.03.2020, *inter alia*, directing the release of under-trial prisoners alleged to have committed offences punishable with punishment for seven years or less. Later, a Full Bench of this Court by order dated 25.03.2020 in W.P.(C) No.9400 of 2020 (Suo Motu), has issued directions to de-congest the prisons in the State, keeping in mind the proposition that bail is the rule and jail

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is the exception.

11. Having regard to the facts and circumstances of the case, particularly the fact that the petitioner has been in incarceration for the last 30 days; that the investigation as against the petitioner is almost complete; that the petitioner's continued detention is unnecessary; the legal proposition laid down by the Honourable Supreme Court in the aforesaid decisions; the directions of the Hon'ble Supreme Court and a Full Bench of this Court to decongest prisons in view of Covid-19 pandemic, I am inclined to allow this bail application.

12. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down and the closure of Courts, the Jail Superintendent, where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The petitioner shall

also file an undertaking to the Jail Superintendent that he and his sureties will execute the bail bond before the jurisdictional Court within one week of its re-opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the Station House Officer of the Police Station where the crime has been registered, who shall after noting down the above details, release the petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner shall within one week from the re-opening of the jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer on all Tuesdays and Saturdays between 10.00 a.m and 11 a.m till final report is

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filed.

(iv) The petitioner shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioner shall not commit any offence while on bail.

(vi) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the petitioner violates any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail.

**C.S.DIAS  
JUDGE**

sks/28.4.2020

