

(2021) 05 KL CK 0052
In the High Court Of Kerala
Case No : Bail Application No. 3534 Of 2021

Mohanan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 04-05-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Kerala Abkari Act, — Section 8(1)(2), 55(g)

Citation : (2021) 05 KL CK 0052

Hon'ble Judges : P.V. Kunhikrishnan, J

Bench : Single Bench

Advocate : N.L. Bitto, Sreeja V

Final Decision : Allowed

Judgement

1. This Bail Application is filed under Section 439 of Criminal Procedure Code was heard through Video Conference.
2. The petitioner is the accused in Crime No. 23/2021 of Irinjalakuda Excise Range. Above case is registered against the petitioner alleging offences punishable under Sec. 8(1)(2) and 55g of Abkari Act.
3. The prosecution case is that the petitioner was found in possession of 25 litres of arrack, 50 litres of wash and utensils for manufacturing illicit liquor on 26.3.2020 at about 12.45 am behind the bathroom of house No.II/342 of Mattathoor Grama Panchayat. The petitioner was arrested and produced before the Court on 26.3.2021.
4. Heard counsel for the petitioner and the Public Prosecutor. The counsel for the petitioner submitted that the petitioner is in custody from 26.3.2021 onwards. The counsel submitted that even if the allegations are accepted, the offence under Sec. 55 g of the Abkari Act is not made out. The Public

Prosecutor opposed the bail application.

5. It is true that the allegation against the petitioner is very serious. But considering the entire facts and circumstances of this case and also

considering the fact that the petitioner is in custody from 26.3.2021 onwards, I think this bail application can be allowed on stringent conditions.

6. Moreover, the 2nd wave of COVID-19 is spreading in the country and the citizens are facing serious difficulties. In the state of Kerala, the 2nd

wave of the pandemic is creating lot of problems and even the day-to-day life of the citizens are affected. Everyday, about 25,000 people are tested

positive with COVID-19. In such circumstances, this Court has to consider this fact also while considering bail applications. The life is more important

than anything. Therefore, I am considering this bail application based on the above pandemic situation.

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. These happened during the

1st wave of COVID-19 season.

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. Petitioner shall be released on bail on executing 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.

2. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall co-operate with the

investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to

dissuade him from disclosing such facts to the Court or to any police officer.

3. Petitioner shall not leave India without permission of the jurisdictional Court.

4. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

5. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of

social distancing in the wake of Covid 19 pandemic.

6. 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.