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**Subran @ Aliyan Subran vs State of Kerala**

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**SooperKanoon Citation** : sooperkanoon.com/1764556

**Court** : Kerala

**Decided On :** Apr-24-2020

**Judge** : Honourable Mr.Justice C.S.Dias

**Appeal No.** : Bail Appl./2413/2020

**Appellant** : Subran @ Aliyan Subran

**Respondent** : State of Kerala

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT: THE HONOURABLE MR.JUSTICE C.S. DIAS FRIDAY, THE 24TH DAY OF APRIL 2020/4TH VAISAKHA , 1942 Bail Application No. 2413 OF 2020 (Against the Crime No: 336/2020 Koratty Police Station, Thrissur District)

Petitioner/Accused Subran @ Aliyan Subran, aged 64 years, S/o Chothi, Mullaserry House, Pambuthara Desom, Kadukutty Village, Thrissur District By Adv Sri P.K Varghese Adv.Sanjana Rachel Jose Respondent/Complainant State of Kerala Represented by the Public Prosecutor, High Court of Kerala, Ernakulam-682031 BY Public Prosecutor SrI.Amjad Ali THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 24.04.2020, THE COURT ON THE SAME DAY

PASSED THE FOLLOWING: B.A.No. 2413 OF 2020 2

## ORDER

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

2. The petitioner is the accused in Crime No. 336/ 2020 of the Koratty Police Station. The petitioner is alleged to have committed the offence punishable under Section 55(g) of the Abkari Act.

3. The prosecution case, in brief, is that: the petitioner was

found in possession of 50 Ltr can with wash on 07.04.2020. The investigating Officer seized the wash from the terrace portion of the petitioner's residential building. Thus the petitioner has committed the above offence.

4. The petitioner was arrested on 07.04.2020. His application for bail was dismissed by the learned Judicial First Class Magistrate, Chalakudy by order dated 08.04.2020. The petitioner has been under custody for the last 17 days.

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 the petitioner is absolutely innocent of the accusations leveled against him.

B.A.No. 2413 OF 2020 3 The petitioner has been in judicial custody for the last 17 days. The investigation of the case is practically complete. The petitioner's continuous detention is unnecessary. 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 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)

B.A.No. 2413 OF 2020 4 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 25.03.20202 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 is the exception.

11. Having regard to the facts and circumstances of the case, particularly the fact that that the petitioner has been in incarceration for the last 17 days; that the investigation in the case is practically complete;

that the petitioner's continued detention is unnecessary; the legal proposition laid down by the Honourable Supreme Court in the afore cited decisions; and the directions of the Honourable Supreme Court and a Full Bench of this Court to decongest prisons in view of Covid-19 pandemic, I B.A.No. 2413 OF 2020 5 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 reB.A.No. 2413 OF 2020 6 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 Saturdays between 10.00 a.m and 11 a.m till final report is 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. Sd/- C.S.DIAS, JUDGE SM

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