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**Arun vs State of Kerala**

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**SooperKanoon Citation** : sooperkanoon.com/1764865

**Court** : Kerala

**Decided On :** Apr-28-2020

**Judge** : Honourable Mr. Justice P.V.Kunhikrishnan

**Appeal No.** : Bail Appl./2518/2020

**Appellant** : ARUN

**Respondent** : State of Kerala

**Judgement** :

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 B.A.NO.2518 OF 2020 (Crime number 364 of 2020 on the file of Edathua Police Station in Alappuzha District) Petitioners/Accused

1. Arun, aged 32 years, Son of Anilkumar, Madathilkunnel, Thalavady South,

2. Vilasan, aged 34 years, Son of Nanu, Noottimuppathilchira House, Kodambanadi Muri,

3. Abhijith, aged 21 years, Son of Ashokan, Thundiyil, Kunthirikkal Muri, Thalavady Village, BY ADV.SMT.PRAMEELA C.K. Respondent/Complainant

1. State of Kerala, represented by Public Prosecutor High Court of Kerala, Ernakulam, Kochi-682031.

2. The Sub Inspector of Police, Edathua Police Station, Alappuzha-689573. 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: B.A.No.2518 OF 2020 2 P.V.KUNHIKRISHNAN, J ---------- B.A. No.2518 of 2020 ---------- Dated this the 5th day of May, 2020

## ORDER

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. petitioners are the accused in Crime No.364 of 2020 of

Edathua Police Station registered alleging offences punishable under Sections 55(b), 55(g) and Section 8(1)(2) of the Abkari Act. Petitioners were arrested on 12.04.2020 and they are in custody. 3.The prosecution case is that the petitioners were found in possession of 650ml of illicit arrack and utensils.

4. The counsel for the petitioners submitted that they are

in custody from 12.04.2020. 5.The learned Public Prosecutor submitted that bail may be granted to the petitioners by this Court with stringent conditions. B.A.No.2518 OF 2020 3

6. Considering the quantity of the contraband seized and considering the date of arrest of the petitioners, I think this bail application can be allowed.

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 B.A.No.2518 OF 2020 4 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 petitioners are incarcerated is directed to release the petitioners on bail on executing a self bond ensuring that they will appear before the Court concerned as and when required, if they are not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioners 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 petitioners would be residing after their release.

3. The Superintendent of Jail concerned,

immediately after release of the petitioners will forthwith forward the bail bond obtained from B.A.No.2518 OF 2020 5 the petitioners to the jurisdictional Court.

4. The petitioners immediately after

> release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish their 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 petitioners and shall ensure that the petitioners do not violate the terms of the undertaking.

5. The petitioners shall appear before the

Investigating Officer as and when required. The petitioners shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

6. The petitioners shall within one week from the commencement of the functioning of B.A.No.2518 OF 2020 6

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 petitioners 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 petitioners, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court. Sd/- P.V.KUNHIKRISHNAN, JUDGE YKB

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