

Shibith, vs State of Kerala

Shibith, vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1766626

Court : Kerala

Decided On : May-29-2020

Judge : Honourable Mr. Justice Ashok Menon

Appeal No. : Bail Appl./2947/2020

Appellant : Shibith,

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ASHOK MENON
FRIDAY, THE 29TH DAY OF MAY 2020 / 8TH JYASHTA, 1942 CRIME
NO.59/2020 OF Karthikappally Excise Range Office, Alappuzha
PETITIONER/SOLE ACCUSED: SHIBITH, S/O. CHANDRAN,
PUTHANPURAYIL HOUSE, NALLANICKAL, ARATTUPUZHA VILLAGE,
KARTHIKAPPALLY TALUK, ALAPPUZHA DISTRICT, PIN-690 515. BY
ADV. SRI.ARUN CHANDRAN RESPONDENTS/STATE AND
COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA CAMPUS,
ERNAKULAM DISTRICT, PIN CODE-682 031. 2 THE EXCISE
INSPECTOR THE EXCISE RANGE, KARTHIKAPPALLY, HARIPPAD

POST, ALAPPUZHA DISTRICT, PIN CODE-690 514. SRI. AMJAD ALI PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 29th day of May 2020 This is an application filed under Section 438 of Cr.P.C seeking anticipatory bail.

2. Petitioner is the sole accused in Crime

No.59/2020 of Karthikappally Excise Range of Alappuzha, for having allegedly committed offences punishable under Sections 8(1) and 8(2) of the Kerala Abkari Act.

3. The prosecution case in brief is that, on 25.04.2020 at about 2.00 P.M the excise officials saw the accused standing near the Mullamadam

Temple carrying a white can containing some liquid. On seeing the Excise officials he fled from there abandoning the can which on examination was found to contain 2.8 litres of arrack. The petitioner states that, he has been falsely implicated, he has no criminal antecedents, and therefore he may be released on a pre-arrest bail.

4. Heard the learned counsel appearing for the petitioner and the learned public prosecutor.

5. It is to be understood that Section 41A of

the Abkari Act creates an embargo on the petitioner seeking a pre-arrest bail. The Hon'ble Supreme Court has confirmed it in *Muraleedhara v. State of Kerala* [2001 KHC 411]; for the reason that Section 41A of the Abkari Act is a pari materia with Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The provisions of the NDPS Act provides for application of Section 37 only for certain offences mentioning in that Act. But as far as an Abkari Act is concerned, there is

total embargo for all the offences coming under the Abkari Act. There is nothing to support that the petitioner is not guilty of the offence alleged against him. Hence, the petitioner cannot seek an anticipatory bail. He is therefore, directed to surrender before the investigating officer within two weeks, and after interrogation he shall be at the earliest produced before the jurisdictional Magistrate, before whom the petitioner shall be at liberty to apply for a regular bail which shall be disposed of expeditiously, preferably on the very same date. With these observations the petition is disposed of. Sd/- ASHOK MENON JUDGE SPK

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com