

(2024) 04 KL CK 0036**High Court Of Kerala****Case No:** Bail Application No.2228 Of 2024

Abhilash

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: April 3, 2024**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 439
- Kerala Abkari Act,1 of 1077 - Section 55(i)

Hon'ble Judges: C.S.Dias, J**Bench:** Single Bench**Advocate:** S.Jayakrishnan, D.Sreevallabhan, C S Hrithwik**Final Decision:** Allowed**Judgement**

C.S.Dias, J

1. The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the sole accused in Crime No.26/2024 of the Karunagappally Excise Range Office, Kollam, registered against him for allegedly committing the offence punishable under Section 55(i) of the Kerala Abkari Act,1 of 1077. The petitioner was arrested on 01.03.2024.

2. The crux of the prosecution case is that; on 01.03.2024 at around 07.15 hours, the accused was found in possession of 52 litres of Indian Made Foreign Liquor for the purpose of sale. The petitioner was arrested then and there from the spot with the contraband article. Thus, the accused has committed the above offence.

3. Heard; Sri. S. Jayakrishnan, the learned counsel appearing for the petitioner and Sri. C.S. Hrithwik, the learned Senior Public Prosecutor appearing for the respondent.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. He has been falsely implicated in the crime. The petitioner is a law abiding citizen and does not have any criminal antecedents. In any given case, the petitioner has been in judicial custody since 01.03.2024, the investigation in the case is complete, and recovery has been effected. Therefore, the petitioner's further detention is unnecessary. Hence, the petitioner may be released on bail.

5. The learned Public Prosecutor opposed the application. The Investigating Officer has filed a bail objection report, *inter alia*, contending that the petitioner was arrested from the spot with the contraband article. The recovery has been effected, the samples have been produced before the Jurisdictional Magistrate and the investigation in the case is in progress. If the petitioner is released on bail, there is every likelihood of him committing a similar offence. Nonetheless, she conceded to the fact that the petitioner does not have any criminal antecedents.

6. After bestowing my anxious consideration to the facts, the rival submissions made across the Bar, and the materials placed on record, particularly taking note of the fact that the petitioner has been in judicial custody since 01.03.2024, that the petitioner has no criminal antecedents, that the recovery has been effected and investigation in the case is practically complete, I am of the view that petitioner's continued detention is not necessary. Hence, the petitioner is entitled to be released on bail.

In the result, the application is allowed, by directing the petitioner to be released on bail on him 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 court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m for a period of two months or till the final report is laid, whichever is earlier. He shall also appear before the Investigating Officer as and when required;

(ii) The petitioner shall not directly or indirectly make any inducement, threat or procure 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 or tamper with the evidence in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while he is on bail;

(iv) The petitioner shall surrender his passport, if any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vi) Applications for deletion/modification of the bail conditions shall be filed and entertained before the court below.

(vii) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi) and Anr.* [2020 (1) KHC 663].