

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 29TH DAY OF AUGUST 2019 / 7TH BHADRA, 1941

Bail Appl..No.6123 OF 2019

CRIME NO.53/2019 OF Chengannur Excise Range Office,  
Alappuzha

PETITIONER/S:

SANTHOSH KUMAR  
AGED 30 YEARS  
MUTHALAPPALLY KIZHAKKADHIL, MUTHUKULAM VILLAGE,  
KARTHIKAPPALLY TALUK, ALAPPUZHA DISTRICT-  
690516.

BY ADV. SRI.K.R.SUNIL

RESPONDENT/S:

THE STATE OF KERALA,  
THROUGH THE EXCISE INSPECTOR, EXCISE RANGE  
OFFICE, CHENGANNUR, ALAPPUZHA DISTRICT,  
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH  
COURT OF KERALA AT ERNAKULAM-682031.

OTHER PRESENT:

SMT.V.SREEJA, PP

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON  
29.08.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**ORDER**

The petitioner is the accused in Crime No.53 of 2019 of Excise Range Office, Chengannur registered for the offences punishable under Sections 55(a) and (i) of the Abkari Act on the allegation that on 30.7.2019 at about 9.45 p.m., the petitioner was found in possession of 18 litres of Indian made foreign liquor for the purpose of sale, in contravention of the provisions of the Abkari Act.

2. The petitioner was arrested from the spot and ever since, he has been in custody.

3. Heard.

4. The learned Public Prosecutor has no serious objection in granting bail to the petitioner. The petitioner is not involved in any other offence, submitted by the learned Public Prosecutor.

5. The learned counsel for the petitioner has submitted

that even though the petitioner filed application for bail before the court below on 31.7.2019, the order on the bail application was passed by the court below only on 22.8.2019 and in the said circumstances, serious prejudice was caused to the petitioner.

6. This court called for the remarks from the Court below. The court below submitted the remarks dated 26.8.2019, which is extracted hereunder:-

“I may humbly submit the remarks for the above subject for kind information.

The bail application in Chengannur Excise Crime was heard on 8.8.2019. The order in the application was passed on 22.8.2019. On 9.8.2019 my steno was on leave, hence dictation could not be given on 9.8.2019. On 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> were public holidays. On 13<sup>th</sup> and 14<sup>th</sup> I was on leave and on 15<sup>th</sup> it was holiday. Since there were other urgent matters to be disposed off, the

bail order could be passed only on 22.8.2019 and the copy was served on 24.8.2019.”

7. The above remarks submitted by the learned Magistrate would clearly show that even though the Bail Application was heard on 8.8.2019, the order was passed on the Bail Application only on 22.8.2019. With regard to the delivering of judgments, the High Court issued two circulars, which are Circular Nos.29/1957 dated 27.9.1957 and 8/1960 dated 7.4.1960. The above circulars would clearly show that the judgment has to be delivered in criminal cases within four days after the conclusion of the trial. The High Court issued the above said circulars for the purpose of speedy disposal of criminal cases after the conclusion of the trial. It is stated in Circular No.29/1957 that where the judgment is not pronounced within four days

of the conclusion of the trial, the delay should be explained in the calendar. Circular No.8/1960 also mandates delivery of the judgment within four days after the conclusion of the trial. It was stated in Circular No.8/1960 that the laches on the part of the Magistrate in not delivering the judgment within four days would be viewed with extreme disfavour.

8. In this case, the Bail Application was heard on 8.8.2019 and the judgment was delivered only on 22.8.2019. The reasons stated by the learned Magistrate for dismissing the application are extracted hereunder:-

“From the prosecution records it *prima facie* appears that the accused have committed the above said offences. Moreover the offence is one exclusively triable by the Court of Sessions. Considering all these aspects the prayer for bail is rejected and this petition is dismissed.”

9. It is not discernible as to why the learned Magistrate called for the report in this case from the Excise Inspector concerned when all the records were available with the court below. Having gone through the remarks submitted by the learned Magistrate, I am of the considered view that the reasons stated by the learned Magistrate are not reasonable and plausible reasons for the delay in delivering the order by the court below on the bail application.

10. It appears from the remarks that the learned Magistrate was of the view that the delay occurred in this case in delivering the judgment was natural. It further appears that the learned Magistrate is not aware as to how the learned Magistrate has to address the High Court in a matter like this. It appears that the learned Magistrate had sent the remarks to this Court casually and



mechanically.

11. There is yet another aspect in this case. As per the report submitted by the learned Magistrate, the bail application was filed on 31.7.2019. However, the same was disposed of by the court below only on 22.8.2019. The Apex Court in Hussain and another v. Union of India (AIR 2017 SC 1362), held that the subordinate criminal courts must dispose of the bail applications normally within one week. The Apex Court further held that the above time limit might be the touchstone for assessment of judicial performance in the annual confidential reports. As per the direction of the Apex Court, the High Court issued Official Memorandum No.D3-33607/2017 dated 13.6.2017 directing the subordinate courts to dispose of the bail applications normally within one week. In this case, the learned Magistrate had taken 22 days in disposing of the

bail application, disregarding the direction issued by the Apex Court and the direction issued by the High Court in the above said circular. The learned Magistrate had also taken 14 days in delivering the order after hearing the bail application. The learned Magistrate also served the copy on the accused only on the third day of passing the order. Having gone through the facts and circumstances of this case, it appears that the delay in disposing of the bail application in this case cannot be justified at all.

12. On the facts of the case, this Court is of the view that the learned Magistrate should have delivered the order on the date of hearing itself or on the next date. Instances have been brought to this Court with regard to the delay in delivering the orders on Bail Applications in the Criminal Courts. The Criminal Courts have to deliver judgments within four days of conclusion of the trial. However, no



such direction was brought to the notice of this court by the Registry in respect of bail applications. In such a situation, this Court is of the view that it is imperative that the criminal courts must deliver orders on the bail applications on the date of hearing itself or on the next day, subject to the rider that the bail applications must be normally disposed of within one week from the date of filing the same.

13. In this case, it appears that there was serious omission on the part of the learned Magistrate in dealing with the bail application. It further appears that the learned Magistrate was not aware even at the time of transmitting remarks to this Court that there was serious omission on her part in disposing of the bail application in this case. Having gone through the relevant inputs, this Court is of the view that the learned Magistrate needs proper guidance

to improve her competency as a Judicial Officer. Therefore, some remedial measures are to be taken in this case. However, I leave that aspect to be considered on the administrative side of the High Court with the permission of the Hon'ble the Chief Justice. This Court hopes that the Registry will look into the matter seriously.

14. Since there is no guideline regarding the time limit for the disposal of the bail applications after hearing the same, it is necessary to issue the following guidelines:

(1) The bail applications filed under Section 437 of the Code must be disposed of normally within one week.

(2) The orders on such bail applications shall be delivered on the date of hearing of the bail application itself or on the next date.

(3) The copy of the order on the bail applications shall be served on the date of

pronouncing the order itself.

15. Coming to the merits of the bail application, considering the facts and circumstances of the case, including the fact that the petitioner is a first time offender and also taking into consideration of the fact that the contraband seized was Indian made foreign liquor, I am inclined to grant bail to the petitioner.

In the result, this application stands allowed and the petitioner shall be enlarged on bail on condition of the petitioner executing a bond for Rs.30,000/- (Rupees thirty thousand only) with two solvent sureties, each for the like sum to the satisfaction of the Jurisdictional Magistrate and on further condition that the petitioner shall not get involved in any other offence of similar nature during the pendency of this case. Needless to state that the petitioner shall co-operate with the investigation.

Case No. BA 6123/19

-12-

I make it clear that the observations made in this order are not intended to be treated as adverse remarks against the Officer concerned and hence, the said observations shall not be used against the Officer concerned for any purpose.

sd

**B. SUDHEENDRA KUMAR, JUDGE.**

dl/stk

true copy