

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

Bail Appl..No. 250 of 2015 ()

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CRIME AND OCCURRENCE NO. 115/2014 OF CHERTHALA RANGE,
ALAPPUZHA DIVISION.**

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PETITIONERS (ACCUSED):-

- 1. SHAJIMON, AGED 46 YEARS,
S/O.PURUSHAN, PUTHENCHIRA VEEDU,
CHERTHALA NORTH VILLAGE, CHERTHALA,
DISTRICT ALAPPUZHA.**
- 2. GANESAN, AGED 52 YEARS,
S/O.RAJAPPAN, SOUBHAGYA HOUSE,
KOKKOTHAMANGALAM, CHERTHALA P.O.,
DISTRICT ALAPPUZHA.**
- 3. ANILKUMAR, AGED 48 YEARS,
S/O.KRISHNAPPAN, SREESAILAM (VRIDAVANAM),
CHERTHALA P.O., DISTRICT ALAPPUZHA.**
- 4. PRADEEP, AGED 46 YEARS,
S/O.MANIYAPPAN, PUTHUVAL NIKARTHU HOUSE,
CHERTHALA, DISTRICT ALAPPUZHA.**

**BY ADVS.SRI.K.REGHU KOTTAPPURAM,
SRI.M.MUKESH,
SRI.R.MAHESH (KOTTAPPURAM),
SRI.MURUKESH REGHU.**

RESPONDENTS:-

- 1. THE RANGE INSPECTOR,
CHERTHALA EXCISE RANGE,
ALAPPUZHA DIVISION, ALAPPUZHA-688 001.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SRI.SREEJITH. V.S.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 23-01-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

B. KEMAL PASHA, J.

.....
B.A. No.250 of 2015
.....

Dated this the 23rd day of January, 2015

ORDER

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Petition under Section 438 Cr.P.C.

2. Petitioners are the accused in Crime No.115/2014 of Cherthala Excise Range, registered for the offences punishable under Sections 57(a) and 56(b) of the Abkari Act.

3. The petitioners are allegedly the Manager and licensees of toddy shop Nos.84, 85 and 87 to 89 of Cherthala Excise Range. When the sample of toddy taken from the said shops was subjected to chemical analysis, it was found containing 8.23% by volume of Ethyl Alcohol as against the permissible quantity of 8.1% by volume fixed as per Rule 9(2) of the Kerala Abkari Shops Disposal Rules, 2002.

4. Heard the learned counsel for the petitioners and

the learned Public Prosecutor.

5. It has come out that any noxious substance was not traced out in the sample of toddy collected from the shop. There is a minor variation of the percentage of Ethyl Alcohol. It seems that the permissible quantity is 8.1% by volume, whereas the quantity traced out in the sample is 8.23% by volume. It seems that the constitutional validity of Rule 9(2) of the Kerala Abkari Shops Disposal Rules, 2002 is in question before the Apex court and the question has not been decided. By considering the variation as a minor variation and in the absence of any noxious substance in the sample, I am of the view that this is a fit case wherein anticipatory bail can be granted to the petitioners.

6. In the result, this bail application is allowed and the investigating officer or such other police officer, who is conducting the arrest of the petitioners, is directed to enlarge the petitioners on bail in the event of their arrest on each of them executing a bond for ₹1,00,000/- (Rupees one

lakh only) with two solvent sureties each for the like sum to the satisfaction of the officer conducting arrest, and subject to the following terms and conditions:-

(i) The petitioners shall report before the investigating officer in between 9 a.m. and 11 a.m. on all Fridays and Tuesdays, commencing from 30.01.2015 for a period of three months or till the filing of the final report in this case, whichever is earlier.

(ii) The petitioners shall not tamper with the evidence or influence witnesses.

(iii) The petitioners shall make themselves available for interrogation as and when required by the investigating officer.

(iv) The petitioners shall not involve in any offence while on bail.

It is made clear that the violation of any of the conditions stipulated above will result in the cancellation of bail.

Sd/-
(B.KEMAL PASHA, JUDGE)