

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

Bail Appl..No. 961 of 2015 ()

CRIME NO. 44/2013 OF KONNI EXCISE RANGE, PATHANAMTHITTA DISTRICT

PETITIONER/ACCUSED:

**G.HAREESH, AGED 42 YEARS,
S/O. GOPINATHAN NAIR, KOCHAYYATHU KIZHAKKETHIL,
KALANJOOR MURI, ADOOR TALUK, PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.NIREESH MATHEW

RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. LALIZA.T.Y.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 19-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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B. KEMAL PASHA, J.

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B.A. No.961 of 2015

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Dated this the 19th day of March, 2015

ORDER

Petition under Section 438 Cr.P.C.

2. Petitioner is the accused in C.R. No.44/2013 of the Konni Excise Range, Pathanamthitta district, registered for the offences punishable under Sections 56(b) and 57(a) of the Abkari Act.

3. The petitioner is allegedly the licensee of toddy shop No.9/2013-14 of Konni Excise Range. When the samples of toddy taken from the said shop were subjected to chemical analysis, it was found that the samples are contained 10.82%, 8.31%, 8.16%, 8.31% and 10.74% respectively 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 petitioner and the learned Public Prosecutor.

5. It has come out that any noxious substance was not traced out in the samples 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 samples are 10.82, 8.31, 8.16, 8.31 and 10.74% 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 variations as a minor variations and in the absence of any noxious substance in the samples, I am of the view that this is a fit case wherein anticipatory bail can be granted to the petitioner.

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 petitioner, is directed to enlarge the petitioner on bail in the event of his arrest on his 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 petitioner shall report before the investigating officer in between 9 a.m. and 11 a.m. on all Thursdays and Mondays, commencing from 26.03.2015 for a period of three months or till the filing of the final report in this case, whichever is earlier.

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

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

(iv) The petitioner 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

DSV/19/3/15

// TRUE COPY //

PA to Judge