

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

Bail Appl..No. 1020 of 2015

**C.R. NO. 44/2010 OF VAMANAPURAM EXCISE RANGE,
THIRUVANANTHAPURAM DISTRICT.**
.....

PETITIONER/ACCUSED NO.2:

**GANESH, AGED 36 YEARS,
S/O. CHANDRAN PILLAI,
SREE GANESH HOUSE,
KARIPPOOR THEKKUMKARA DESOM,
NEDUMANGADU VILLAGE, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.NIREESH MATHEW

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.SREEJITH V.S.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 10-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

B. KEMAL PASHA, J.

=====

B.A. No.1020 of 2015

=====

Dated this the 10th day of March, 2015

ORDER

Petition under Section 438 Cr.P.C.

2. Petitioner is the 2nd accused in C.R. No.44 of 2010 of the Vamanapuram Excise Range, registered for the offence punishable under Sections 57(a) of the Abkari Act.

3. The petitioner is allegedly the licensee of toddy shop No.5/2010 of Vamanapuram Excise Range. When the sample of toddy taken from the said shop was subjected to chemical analysis, it was found containing 8.16% 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 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 8.16% 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 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 Tuesdays and Fridays, commencing from 17.03.2015 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/11/3/15

// TRUE COPY //

PA to Judge