

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

Bail Appl..No. 1816 of 2015

CRIME NO. 39/2015 OF PONNANI EXCISE RANGE OFFICE , MALAPPURAM

PETITIONERS/ACCUSED NOS. 1 & 2:

1. SUDHIL, AGED 44 YEARS
S/O. DASAN, POTTEKKATTU HOUSE, MAMPILLY DESOM
KARAMUKKU VILLAGE, THRISSUR DISTRICT.
2. VISHNUDAS, AGED 44 YEARS
S/O. VISWANADHAN, MAMDATHU HOUSE,
NARIPARAMBU DESOM
KALADI VILLAGE, PONNANI TALUK.

BY ADV. SRI.NIREESH MATHEW

RESPONDENT/COMPLAINANT:

**STATE OF KERALA
REP. 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 09-04-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

B. KEMAL PASHA, J.

.....
B.A. No.1816 of 2015
.....

Dated this the 9th day of April, 2015

ORDER

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Petition under Section 438 Cr.P.C.

2. Petitioners are accused Nos.1 and 2 in C.R. No.39/2015 of Ponnani Excise Range, Malappuram district, registered for the offence punishable under Section 57(a) of the Abkari Act.

3. The petitioners are allegedly the employee and licensee of toddy shop No.8/2014-15 of Ponnani 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 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 8.16% 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 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 Thursdays and Mondays commencing from 16.04.2015 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)

aks/09/04

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PA to Judge