

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Bail Appl..No. 3633 of 2015

CRIME NO. 46/2015 OF PERINTHALMANNA EXCISE RANGE OFFICE, MALAPPURAM

PETITIONER(S)/ACCUSED 1 AND 2:

- 1. SURENDRAN, AGED 44 YEARS,
S/O.NARAYANAN, KOTTAYIL HOUSE, VILAYOOR DESOM,
VILAYOOR AMSOM, OTTAPALAM TALUK.**
- 2. GANGADHARAN, AGED 48 YEARS,
S/O.NARAYANAN, KOTTAYIL HOUSE, VILAYOOR DESOM,
VILAYOOR AMSOM, OTTAPALAM TALUK.**

BY ADV. SRI.NIREESH MATHEW

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SMT.LISHA M.G.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09-07-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

SUNIL THOMAS, J.

B.A. No.3633 of2015

Dated this the 9th day of July, 2015

O R D E R

The applicants, who are the employee and the licensee respectively of a toddy shop No.20/2014-15 of Perinthalmanna Excise Range, stand indicted for offences punishable under Sections 57(a) and 56(b) of the Kerala Abkari Act.

2. The allegation of the prosecution is that when sample of toddy was taken from the above toddy shop and sent for chemical analysis, the report revealed that the sample contained 9.10% of ethyl alcohol, which was in excess of the permissible limit of 8.1% fixed by Rule 9(2) of the Kerala Abkari Shops Disposal Rules 2002. On the basis of that, a crime was registered and the police is investigating. Apprehending arrest, the applicants have approached this Court seeking pre-arrest bail.

3. Heard and examined the records.

4. The learned counsel for the applicants contended that the constitutionality of fixing the permissible limit of ethyl alcohol at 8.1% is under challenge before the Hon'ble Supreme Court. It was further submitted by the learned counsel that at an earlier point of time the identical provision was held to be unconstitutional, thereafter

reintroduced by the statute. The learned counsel further submitted that the Hon'ble Supreme Court by the order dated 14/1/2015 in Civil Appeal Nos.4039 to 4053/2009 had directed the State Government to conduct a study and to consider whether this provision requires a re-look. The learned counsel also relied on the view taken by the other Hon'ble Judges of this Court in B.A.Nos.7005/2014 and 9208/2011 in identical scenario. Considering the contention of the learned counsel that at the most it may be a violation of the statutory provision and the further fact that sample was taken supported by contemporaneous documents and ultimately if the above provision is found to be unconstitutional it may cause irreparable injury to them, I am inclined to grant bail to the applicants subject to the following conditions:

i). Both the applicants shall appear before the Investigating Officer on 20/7/2015 between 9 and 10 a.m.. They shall offer themselves for interrogation and if the Investigating Officer finds that their arrest is required, they shall be released on bail on each of them executing a bond for a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) with two solvent sureties for the like sum each.

ii). They shall appear before the Investigating Officer as and when required and shall not in any manner interfere in the course of investigation.

iii). They shall not get themselves involved in any other identical offences.

The petition is allowed as above.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

