

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

Bail Appl..No. 3641 of 2015

CRIME NO. 9/2015 OF MALLAPPALLY EXCISE RANGE OFFICE , PATHANAMTITTA

PETITIONER(S)/ACCUSED NO.2:

**BIJU N.S, AGED 43 YEARS,
S/O.SUGUNAN, NADUVATHARA VEEDU, CHALAPPALLY,
THIRUVALLA, PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.NIREESH MATHEW

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.C.RASHEED

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01-07-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

K. HARILAL, J.

B.A. No.3641 of 2015

Dated this the 1st day of July, 2015

ORDER

This is an application for regular bail filed under Sec.439 of the Code of Criminal Procedure.

2. The petitioner is the 2nd accused in CR.No.9/2015 of Mallappally Excise Range, registered for the offence punishable under Sec.55(a) of the Kerala Abkari Act.

3. The prosecution case is that on 15/1/2015 at about 1.50 p.m. the Excise party conducted a search in the house of one Madhusoodhanan Nair, the 1st accused, and seized 160 liters of spirit from there. It is also alleged that the said Madhusoodhanan Nair and one Aniyankunju were present in the said house when

the Excise party reached there and both of them ran away from the scene on seeing the Excise party. Subsequently, the petitioner was arrested on 13/5/2015.

4. The learned counsel for the petitioner submits that the petitioner is innocent of the allegations levelled against him and he is falsely implicated in the offence on a mistaken identity. According to him, the petitioner is not Aniyankunju as alleged by the prosecution. So also, his father is not Achukuttan. According to him, he is Biju. N.S. and his father is one Sugunan. It is also submitted that the investigation is practically over and continued detention is not necessary for further investigation.

5. The learned Public Prosecutor, on instructions, submits that, on investigation so far conducted, the Excise party found that the petitioner is also known as 'Aniyankunju' and his father is also known as 'Achukuttan'. So, Aniyankunju and Biju N.S. are one

and the same person. Similarly, Achukuttan and Sugunan are also one and the same person. It is also submitted that the petitioner was arrested on 13/5/2015 on the allegation that he ran away from a shed where 160 litres of spirit was stored. If the petitioner is released, at this stage, he may tamper with the evidence and influence the witnesses acquainted with the facts and circumstances of this case. It is also pointed out that he was involved in another crime for the same offence and if he is released on bail, he may repeat the offence again.

6. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

7. Going by the prosecution case, it is seen that the case of the prosecution is that Biju N.S. and Aniyankunju are one and the same person. Per contra, the case of the petitioner is that he is not Aniyankunju and Achukuttan is not his father and his father is one Sugunan. The identity is a question of

fact which can be decided after trial only. Therefore, the question of identity will stand left open.

8. The petitioner was arrested on 13/5/2015 and the Excise party got enough time to investigate the case. Having regard to the duration of the period in which he had already undergone pre-trial incarceration, I am of the opinion that continued detention is not necessary for further investigation and he can be released on bail on stringent conditions. Hence this application will stand allowed on the following conditions:

(i) The petitioner shall be released on bail on his executing a bond for ₹100,000/- (Rupees One lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Judicial First Class Magistrate, Thiruvalla.

(ii) The petitioner shall report before the Investigating Officer on

every Monday at 10 a.m. for a period of one month and also as and when required by the Investigating Officer.

(iii) The petitioner shall not tamper or attempt to tamper with the evidence or influence or try to influence the witnesses.

(iv) The petitioner shall not involve in similar offences during the course of trial.

If any of the conditions is violated, the bail granted to the petitioner shall stand cancelled and the learned Magistrate concerned on being satisfied of the said fact, may take steps as are available to him in law.

Sd/-

(K. HARILAL, JUDGE)

Nan/

//true copy// P.S. to Judge