

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS.JUSTICE MARY JOSEPH

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

Bail Appl..No.3813 of 2015

CRIME NO.52/2013 OF CHITTAR EXCISE RANGE,PATHANAMTITTA.

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PETITIONER'S/ACCUSED 2 & 4:

1. ROJAN THOMAS,AGED 30 YEARS,
S/O.THOMAS MATHEW,RESIDING AT
KOCHUPARAMBIL HOUSE,KOCHANDI,
KUMARARPEROOR,VADAKKEKARA MURI,
SEETHATHODU VILLAGE,KONNI TALUK.
2. ROBIN THOMAS,AGED 28 YEARS,
S/O.THOMAS MATHEW,RESIDING AT
KOCHUPARAMBIL HOUSE,KOCHANDI,
KUMARARPEROOR,VADAKKEKARA MURI,
SEETHATHODU VILLAGE,KONNI TALUK.

BY ADV.SRI.MANU RAMACHANDRAN

RESPONDENT'S/COMPLAINANT/STATE:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.
2. THE EXCISE INSPECTOR,
CHITTAR EXCISE RANGE,
PATHANAMTHITTADISTRICT - 695 123.

BY PUBLIC PROSECUTOR SMT.REMA.R

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 03-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

pk

MARY JOSEPH, J.

B.A. No.3813 of 2015

Dated this the 3rd day of July 2015

O R D E R

Application for bail filed under Sec.439 of the Code of Criminal Procedure.

2. Petitioners are accused nos.2 and 4 in Crime No.52 of 2013 of the Chittar Excise Range registered for the offences punishable under Secs.8(1) and (2) and 67 (B) of the Kerala Abkari Act. The prosecution allegation at the initial stage was that on 16.10.2015 three persons were found transporting arrack in an autorickshaw bearing registration no.KL-62-5182 and they were intercepted by the excise party at the leadership of the Excise Inspector, Chittar Excise range near Muslim Jama-Ath Mosque near Kochani in Angamoozhi Moozhiyar road. It is alleged that when the auto rickshaw was made to stop by the excise party, the persons inside the vehicle fled off from the scene after throwing away the plastic cans in their possession. Three litres of arrack contained in one among the plastic Kannas and the mobile phone

abandoned in the auto rickshaw were seized. On the basis of the seizure, the crime in question was registered arraying the owner of the mobile phone as the 1st accused, the owner of the auto rickshaw as the 2nd accused and a passenger in the auto rickshaw as the 3rd accused. Much later, on the basis of the information disclosed from the confession statement of the 1st accused in custody in Crime No.5 of 2015 of the Chittar Excise Range, the person who was driving the auto rickshaw was also incorporated as the 4th accused. According to the learned counsel, the 2nd accused has no involvement in the offence alleged and solely on the reason that the auto rickshaw was owned by him that he was implicated into the crime.

3. Sri. Manu Ramachandran, the learned counsel appearing for the petitioners and Smt. R. Rema, the learned Public Prosecutor appearing for the respondent were heard in detail. The case diary as well as the report furnished by the respondent were perused.

4. It is submitted by the learned counsel that the name of the 4th petitioner does not find a place in the

First Information Report, originally at the time of its registration. It was added belatedly, allegedly after the recording of the Confession Statement of the 1st accused and therefore, it can only be viewed with suspicion. According to the counsel, the quantity of contraband seized only comes to 3 litres and the seizure was not from the conscious possession of the petitioners. The counsel also urged that the incorporation of the name of the 2nd petitioner (4th accused) being based on the confession statement of a co-accused, lacks legal sanctity. Lastly and finally, it is submitted that, petitioners having been served 36 days in judicial custody, this court is perfectly justified in enlarging both of them on bail.

5. The learned Public Prosecutor has opposed the bail application. According to her, the petitioners were taken into custody following their surrender before the Judicial First Class Magistrate Court- Ranni on 01.06.2015 and since then, they were in judicial custody. According to her, the materials supplied to her by the respondent reveal that the 1st accused has already been enlarged on bail. On a query by this court as to the

criminal background of the petitioners, the learned Public Prosecutor has submitted that one crime is pending, but that is not one registered under the Kerala Abkari Act.

6. Upon considering the rival contentions put forth and perusing the materials placed, I find it appropriate to enlarge the petitioners on bail.

In the result, the bail application is allowed and the petitioners stand enlarged on bail on executing a bond by each of them for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Judicial First Class Magistrate, Ranni and subject to the conditions laid down herein below.

1. The petitioners shall report before the Investigating Officer in between 9.00 a.m. and 11.00 a.m. on all Mondays and Thursdays commencing from 13th July 2015 for a period of three months or till the filing of the final report in the case in question, whichever is earlier.

2. The petitioners shall not tamper with the evidence or influence the witnesses.

3. The petitioners shall not involve in any offence while on bail.

4. The petitioners shall not enter the limits of Chittar Excise Range, Pathanamthitta District except for compliance of condition no.1, for a period of three months from the date of this order.

In case of violation of any of the aforesaid conditions, the respondent is at liberty to move for cancellation of bail, in accordance with law.

Sd/-
MARY JOSEPH
JUDGE

/ True Copy /

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P.A. To Judge