

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Bail Appl..No. 5723 of 2015 ()

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CRIME NO. 102/2015 OF PATHANAMTHITTA EXCISE RANGE,
PATHANAMTHITTA DISTRICT.**

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PETITIONER/2ND ACCUSED:

**DR.DAYANANDAN, AGED 59 YEARS,
S/O.M.S. NANU VAIDYAN, NIRMALA BHAVAN,
KONNI, PATHANAMTHITTA DISTRICT.**

**BY DR.K.P.SATHEESAN, SENIOR ADVOCATE.
ADVS. SRI.P.MOHANDAS (ERNAKULAM),
SRI.ANOOP.V.NAIR,
SRI.S.VIBHEESHANAN,
SRI.K.SUDHINKUMAR.**

RESPONDENTS/STATE & COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.**
- 2. THE EXCISE INSPECTOR,
PATHANAMTHITTA EXCISE RANGE,
PATHANAMTHITTA-689 645.**

BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 15-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

RAJA VIJAYARAGHAVAN.V. J

B.A.5723 of 2015

Dated 15th October, 2015

ORDER

- 1.The application is filed u/s 438 of the Code of Criminal Procedure.
- 2.The petitioner is the 2nd accused in crime No.102 of 2015 of Pathanamthitta Excise range. The said crime was registered for offence punishable u/s 55(a), 56(b) and 58 of the Abkari Act and S.10 and 17 of the Kerala Spirituous Preparations (Control) Rules, 1969.
- 3.The case of the prosecution is that on 17.8.2015 at 6.45 pm, the Excise Inspector of the Pathanamthitta Excise Range, inspected the premises of a provisional store run by the 1st accused and seized a total quantity of 61.7 liters of coloured liquid having the characteristics of an Ayurvedic preparation and having the smell of alcohol found in bottles. The said bottles

were seized from the provision shop of the 1st accused and from near the well situated in the same premises. The petitioner was arrayed as the 2nd accused in the said crime, as according to the prosecution, the 1st accused had utilized the Spirituous Preparation (S.P.VII) licence issued by the Deputy Commissioner of Excise, Pathanamthitta in favour of the petitioner herein.

4.I have heard the learned Senior counsel appearing for the petitioner as well as the learned Public Prosecutor.

5.The learned Senior counsel would submit that the petitioner is a qualified Ayurvedic doctor and he is running a very reputed Nursing home at Konni since the year 1980. As directed by this Court, the petitioner also produced Annexure-IV to VIII which are S.P.VI licence, S.P.VII licence, L2 licence and the licence in Form 26-D issued by the Excise department and also the certificate of Good Manufacturing Practice; all issued in the name of the petitioner to substantiate his contention that he is running the hospital in accordance

with law and after complying with all the statutory formalities. It is further submitted by the learned Senior counsel that the petitioner was having two consultation centres; one at Alimukku and another at Mathoor in Pathanamthitta District. In order to provide treatment to patients, he visits the consultation centre twice weekly. The consultation centre at Mathoor is conducted in a rented premises. One part of the said premises is occupied by the 1st accused, Anilkumar, who is running a provision store. According to the learned Senior counsel, the aforesaid Anilkumar had dispensed these illicit materials from his provision shop and the Excise Inspector, under the premise that the petitioner was the person responsible, had implicated the petitioner as the 2nd accused in the said crime. It was further submitted that the petitioner had nothing to do with the acts of the 1st accused. According to the learned Senior counsel, the petitioner is aged 60 years and has no criminal antecedents.

6.The learned Public Prosecutor, basing on the report

submitted by the Excise Inspector of the Pathanamthitta Excise Range in C.R.102 of 2015, has submitted that the coloured liquid found near the premises of the 1st accused, was being dispensed by the 1st accused to the local people and the facts would reveal that the same could have been manufactured only by the petitioner herein. It was further submitted that the offence committed is very grave and the petitioner is not entitled to get himself armed with an order u/s 438 of the Cr.P.C.

7.I have considered the rival submissions. On going through Annexure-I report in C.R.102 of 2015, it is revealed that 61.7 litres of coloured liquid having the smell of alcohol was found near the premises of the 1st accused, Anilkumar. The learned Public Prosecutor is correct in his submission that the Clinic of the petitioner was also being run from the nearby premises. The case records would further reveal that the liquid having the smell of alcohol was seized exclusively from the premises of the 1st accused and as things stand now

there is nothing to link the petitioner except for the fact that the clinic of the petitioner is functioning nearby. The exhibits produced by the petitioner would reveal that he has been given wholesale licence for the possession and sale of spirituous preparations by the Excise Department. It has also not been reported that the petitioner is having any criminal antecedents. There is also no likelihood of the petitioner fleeing from justice.

8. After having considered all the relevant facts, the status of the petitioner in society and taking note of the advanced age of the petitioner and also the exhibits produced as Annexure-IV to VIII, I am of the considered view that this is not a case wherein custodial interrogation of the petitioner is warranted. The petitioner can be granted bail subject to stringent conditions so that the investigation in this case will not be thwarted.

- i. The petitioner, shall, within a period of one week, surrender before the

Investigating officer and submit himself for interrogation. Thereafter, he shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the investigating officer. In that event, the petitioner shall be released on bail.

ii. The petitioner shall appear before the investigating officer at 10.00 a.m. on the next two consecutive days and submit himself for interrogation.

iii. If the Investigating officer requires the attendance of the petitioner on any further occasion than the days mentioned above, he can direct the petitioner in writing to appear and co-operate with the investigation.

iv. The petitioner shall surrender his passport before the Magistrate concerned in one week from the date of appearance before the Investigating officer. If the petitioner does not possess the passport, he shall swear to an affidavit showing that fact and submit it before the learned Magistrate having jurisdiction.

v. The petitioner shall not influence or intimidate the witnesses. He shall not meddle in any manner with the investigation.

vi. The petitioner shall not leave the limits of State of Kerala without the permission of the Magistrate concerned.

vii. If any of the conditions above is violated, the Magistrate having jurisdiction is empowered to cancel the bail in accordance with law without referring the matter to this Court.

The Bail application is disposed of as above.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

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P.S. To Judge