

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

Bail Appl..No. 6862 of 2015 ()

CRIME NO. 133/2015 OF SULTHANBATHERY EXCISE RANGE, WAYANAD DISTRICT

PETITIONER/ACCUSED :

**SANIL, AGED 31 YEARS
S/O.KUNJIRAMAN, CHAKKARAKKANDI HOUSE
MANANTHAVADI POST, PANDIKKADAVU.**

BY ADV. SRI.A.C.DEVY

RESPONDENT/COMPLAINANT :

**STATE OF KERALA
REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
ERNAKULAN - 682 031.**

BY PUBLIC PROSECUTOR SMT. JASIME V.H.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Mn

K.P.JYOTHINDRANATH, J.

B.A.No.6862 OF 2015

Dated this the 2nd day of December, 2015

ORDER

This is an application under Section 438 of the Code of Criminal Procedure. The case of the petitioner is that the petitioner is now arrayed as accused No.3 in Crime No.133/2015 of Sulthan Bathery Excise Range only because he happened to be the owner of a pick up jeep bearing Reg.No.KL 10 AA 9605. It is the submission of the learned counsel for the petitioner that it is alleged that 696 packets of IMFL each containing 180 ml. was allegedly seized from the said vehicle while the said vehicle was used by the brothers of the petitioner. It is the submission that petitioner was unaware of the commission of the alleged offence by the accused Nos. 1 and 2. It is the submission that it is an admitted fact that accused Nos. 1 and 2 are the brothers of the petitioner herein. Only due to such a relationship, the said vehicle was happened to be in the possession of the said

persons and if they had committed any abkari offence, no stretch of imagination can say that the petitioner is also involved in the same. The prosecution has so far not collected any incriminating material against the petitioner.

2. I also heard the learned Public Prosecutor. The learned Public Prosecutor submitted before me that it is a fact that the said vehicle is now used for transportation of the contraband. It is also pertinent to note that accused Nos. 1 and 2 had also prior history of commission of abkari offence.

3. The offence alleged is under the provisions of a special statute and further considering Section 41 (a) of the Abkari Act, I am not inclined to grant anticipatory bail. But surely the petitioner can very well surrender and co-operate with the investigation. If so advised, the petitioner can surrender before the investigating officer within ten days of this order and the investigating officer can proceed with in accordance with law. It is also made clear that the petitioner is at liberty to give advance notice to the prosecutor regarding his intention to surrender as well as the intention of moving bail

application. Appropriate orders can be passed by the concerned Magistrate on arrest and production by the excise officials.

With the above observation, this application is dismissed.

K.P.JYOTHINDRANATH
JUDGE

SV.