

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYASHTA, 1937

Bail Appl..No. 6857 of 2014 ()

CRIME NO. 232/1997 OF PARIPALLY POLICE STATION , KOLLAM

PETITIONER/5TH ACCUSED:

SUNILKUMAR T.S. ,AGED 52 YEARS
RESIDING AT KANJIRMAVILA PUTHEN VEEDU, KOLANNUR MURI
EZHUKONE VILLAGE, KOLLAM.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS/COMPLAINANT/STATE:

1. THE CIRCLE INSPECTOR OF POLICE
PARAVUR POLICE STATION, PARAVUR, KOLLAM DISTRICT.
2. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SHRI.K.K.RAJEEV

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 02-06-2015,
THE COURT ON 03-06-2015 PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Bail Application No.6857 of 2014 A

Dated this the 3rd day of June 2015

O R D E R

The petitioner is the third accused in Crime No.232/1997 of Paripally Police Station registered under Sections 55(a) and (b) of the Abkari Act.

2. The prosecution allegation is that on 28.10.1997 at about 7 p.m., the accused Nos.1 and 2 were found selling arrack behind the toddy shop of accused Nos.3 to 5 in the crime, in furtherance of the common intention of all the accused. Altogether 16 litres of arrack had been seized by the police from accused Nos.1 and 2. Accused Nos.3 to 5 are the licensees of the said toddy shop. They also shared the common intention with the other accused in selling

arrack by the other accused. The petitioner has filed this petition praying for the relief under Section 438 Cr.P.C.

3. Heard. The learned Public Prosecutor has opposed the application.

4. The learned counsel for the petitioner has submitted that the petitioner and other accused are only licensees of the toddy shop and that they were not caught red handed while selling arrack and in the said circumstances, the petitioners are entitled to be granted the relief under Section 438 Cr.P.C. It appears that the petitioner and other accused also shared the common intention with the other accused in selling arrack by accused Nos.1 and 2. There are materials to connect the petitioner *prima facie* with the commission of the offence. In the said circumstances, it cannot be said, at this stage, that the petitioner is innocent.

5. In the case of regular bail application, there is an embargo under Section 41A of the Abkari Act in granting bail when the

Public Prosecutor opposes the application. If that be so, the inhibition will be more severe when an application under Section 438 Cr.P.C. is dealt with. Since the learned Public Prosecutor has opposed the application, I am not inclined to grant the relief under Section 438 Cr.P.C. in favour of the petitioner, particularly when there are materials to *prima facie* connect the petitioner with the commission of the offence.

6. That apart, the final report had already been filed by the police after completing the investigation. Since the final report has been by the police before the court after completing the investigation, the question of apprehension of arrest by the respondents does not arise at all. For the said reason also, this application lacks merits.

In the result, this bail application stands dismissed. However, since the final report has been already filed before the court, the petitioner shall be at liberty to surrender before the court concerned

to apply for regular bail, if so advised. If the petitioner surrenders before the court and files application for regular bail, after giving notice to the Assistant Public Prosecutor in advance, the court below shall consider and dispose of the bail application in accordance with law, as expeditiously as possible, preferably on the same date of surrender itself.

sd/

**B.SUDHEENDRA KUMAR,
JUDGE**

dl

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PA TO JUDGE