

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

Bail Appl..No. 7122 of 2015 ()

**CRIME NO. 102/2015 OF KOTHAMANGALAM EXCISE RANGE OFFICE,
ERNAKULAM DISTRICT**

PETITIONERS/ACCUSED NOS.1 & 2 :

- 1. RAJU, AGED 45 YEARS,S/O. NARAYANAN,
ERUMBUKANDATHIL HOUSE, KARUKADAM KARA,
KOTHAMANGALAM VILLAGE, KOTHAMANGALAM TALUK.**
- 2. K.K. KRISHNAN, AGED 53 YEARS,
S/O. KADUTHA, KAKKATTIL HOUSE, VAYAMBADI KARA,
IKKARANADU SOUTH VILLAGE, KUNNATHUNADU TALUK.**

BY ADV. SRI.NIREESH MATHEW

RESPONDENT/COMPLAINANT :

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

BY PUBLIC PROSECUTOR SMT. R. REMA

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 17-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

A.HARIPRASAD, J.

B.A. No.7122 of 2015

Dated this the 17th day of November, 2015

ORDER

Application under Section 438 of the Code of Criminal Procedure.

2. Accused 1 and 2 in Kothamangalam Excise Range C.R. No.102 of 2015 registered alleging offences punishable under Sections 56 (b) and 57(a) of the Abkari Act seek pre-arrest bail. Second petitioner is the licensee of a toddy shop and the first petitioner is the employee under the second petitioner.

3. It is submitted that the Excise Officers took sample of the toddy from the second petitioner's shop and on analysis, it was found that the sample contained 8.5% v/v. ethyl alcohol. As per Rule 9(2) of the Kerala Abkari Shops Disposal Rules, 2002, the quantity of ethyl alcohol is 8.1% v/v. There is no allegation that the toddy was adulterated.

4. Heard both sides.

5. Learned counsel for the petitioner submitted that that is a natural phenomenon and there is no question of adulteration. The

difference in the content of ethyl alcohol is marginal. This Court as per order on B.A.No.5442 of 2011 (Annexure-C) and B.A.No.1838 of 2012 (Annexure-D) considered the similar matter and granted pre-arrest bail in such cases.

Considering the entire matters, following directions are issued:

- i. Petitioners shall surrender before the investigating officer within a period of two weeks and submit themselves for interrogation. Thereafter each one of them shall execute a bond for ₹25,000/- (Rupees twentyfive thousand only) with two solvent sureties each for the like sum to the satisfaction of the investigating officer. In that event, they shall be released on bail in Crime No.102 of 2015 of Kothamangalam Excise Range.
- ii. The sureties shall produce documents to establish their identity and solvency. The investigating officer shall not insist on the solvency certificate, but other documents can also be perused to find out whether the sureties are solvent or not.
- iii. Petitioners shall appear before the investigating officer as and when directed in writing and co-operate with the investigation in the matter.
- iv. They shall not influence or intimidate the witnesses.

In case of violation of any of the above conditions, the officer concerned is free to arrest the petitioners as if no order is passed.

A. HARIPRASAD, JUDGE.

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