

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

Bail Appl..No. 7416 of 2015 ()

CR. NO. 93/2015 OF IRINJALAKUDA EXCISE RANGE.

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PETITIONERS/3RD ACCUSED:

**DILEEPKUMAR, AGED 39 YEARS,
S/O. KANNAN, RAMAKRISHNAN,
AYINIKKATHARA HOUSE, AIKKATHARA HOUSE,
THRIKKUR VILLAGE, THRIKKUR P.O.,
THRISSUR DISTRICT.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR),
SRI.N.L.BITTO.**

STATE OF KERALA/COMPLAINANT:

**THE STATE OF KERALA,
REPRESENTED BY THE EXCISE INSPECTOR,
IRINJALAKUDA RANGE, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.MADHUBEN. M.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 17-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

K.P. JYOTHINDRANATH, J.

B.A. No. 7416 of 2015

Dated this the 17th day of December, 2015

O R D E R

This is an application filed under Section 438 of the Code of Criminal Procedure. When the petition came up for hearing, the counsel for the petitioner submitted before me that the petitioner is apprehending arrest and detention in connection with the crime No.93/2015 of Irinjalakuda Excise Range. It is the submission of the accused that originally the Excise officials seized 20 litres of arrack along with wash and during investigation, it appears that the excise also impleaded the second and third accused in the crime.

2. It is the submission made before me that apart from the statement of the first accused, there is nothing before the excise officials to connect this accused with the crime. It is also the submission that only due to some

animosity of the first accused or the second accused against this petitioner, this petitioner's name is also given to the excise officials as a co-accused. It is the submission that the confession cannot be taken into consideration as an evidence to arrest this petitioner.

3. I heard the learned Public Prosecutor.

4. Prosecutor submitted before me that the crime is registered for an offence under Section 55(g) of the Abkari Act. In view of Section 41 of the Abkari Act, as well as considering the fact that the excise officials are not police officers, the bar under Section 25 or 26 of Evidence Act is not applicable.

5. Thus, considering the totality and further keeping in mind that the offence alleged is under a special statute and further the seriousness of the offence, I am not inclined to grant anticipatory bail. But, in this case, it can be seen that by virtue of giving the powers to the excise officials to file a report as contemplated under Section 173 of Code of Criminal Procedure, they can be treated as police officer for

the purpose of investigation and one bound to follow the procedure contemplated in the Cr.P.C in respect of investigation. Thus it can be seen that Section 41 A of the Code of Criminal Procedure can be made applicable in a case of arrest by the excise officials, when the investigation is for the purpose of filing a report under Section 173 of Code of Criminal Procedure. Thus, the police officer is hereby directed that before arrest, he shall issue a notice as contemplated under Section 41 A of Cr.P.C. to the petitioner herein and on such appearance, if the Excise Officials feels that this is a case where arrest is necessary, he shall arrest the petitioner only after complying with the requirement under Section 41 A (3) of the Code of Criminal Procedure. This direction is given using the inherent power vested upon this Court.

Hence, the anticipatory bail application is dismissed.

Sd/-

**K.P. JYOTHINDRANATH
JUDGE**

bpr

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P.A. TO JUDGE