

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

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

Bail Appl..No. 7615 of 2015 ()

CRIME NO. 5/2015 OF PATHANAMTHITTA EXCISE RANGE, PATHANAMTHITTA

APPLICANT/ACCUSED NO. 5 :

**GIREESH, AGED 37 YEARS
S/O.KRISHNANKUTTY, 293, NANGAMALA
3 PUNNATHURA, ETTUMANOOR ,
KOTTAYAM DISTRICT**

**BY SENIOR ADVOCATE SRI.P.VIJAYA BHANU
BY ADVS.SRI.V.C.SARATH
SMT.MITHA SUDHINDRAN**

RESPONDENT/COMPLAINANT :

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

BY PUBLIC PROSECUTOR SMT. LALIZA T.Y.

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

Mn

A.HARIPRASAD, J.

B.A. No.7615 of 2015

Dated this the 17th day of December, 2015

ORDER

Application for pre-arrest bail under Section 438 Cr.P.C.

2. Petitioner is the accused in Crime No.5 of 2015 of Pathanamthitta Excise Range registered for offences punishable under Sections 55(a), 57(a) and 67(B) of the Abkari Act (in short 'the Act').

3. Heard the learned Senior counsel for the petitioner and the learned Public Prosecutor.

4. Prosecution case, in short, is that on 15-01-2015 at about 9.45 a.m., the Excise Circle Inspector, Pathanamthitta and party found a pickup van and another vehicle carrying 2 litres of spirit and 600 litres of toddy mixed with spirit. On enquiry, it was revealed that the contraband was taken to the shop run by the petitioner as a licensee.

5. Learned Public Prosecutor relied on the confession of the 3rd accused to implicate the petitioner in the crime. Learned

Senior counsel for the petitioner submitted that the toddy even according to the prosecution case was in transit to his shop. Further, in reality, the petitioner is only a name lender under the third accused. Petitioner produced documents to show that he is only a toddy tapper. Learned Public Prosecutor contended that the confession of the third accused shows that he used to mix toddy with spirit and it was done as per the instruction of the petitioner.

Presumptions in the second limb of Section 64 reads as follows :

“..... and the holder of a licence or permit under this Act shall be punishable, as well as the actual offender, for any offence committed by any person in his employ and action on his behalf under Section 8 or section 55 or Section 55B or Section 56 or 56A or Section 57 or Section 58 or Section 58A or Section 58B as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were

exercised by him to prevent the commission of such offence;”

6. Learned Senior counsel for the petitioner submitted that the third accused is neither in his employment nor was acting on his behalf. Therefore, presumption under Section 64 of the Act is not attracted in this case. On a careful perusal of the provision, it can be seen that it deals with the vicarious criminal liability of a licensee under the Act. If the confession in its entirety is taken, it shows prima facie that adulteration of toddy was done on behalf of the petitioner and as per his instructions. I am not inclined to grant pre-arrest bail to the petitioner. Hence, following directions are made :

The petitioner shall surrender before the Investigating Officer within a period of one week from today and submit himself for interrogation. Thereafter, he shall be produced before the learned Magistrate having jurisdiction on the same day. If the

petitioner moves for regular bail before the court below, the application shall be considered on merits as expeditiously as possible. If the petitioner does not surrender in the stipulated time, the Investigating Officer is free to arrest him as if no order is passed in this matter.

Sd/-
A.HARIPRASAD,
JUDGE.

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PA TO JUDGE

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