IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942

Bail Appl..No.7854 OF 2020

CRIME NO.37/2020 OF NEELESWARAM EXCISE RANGE OFFICE , Kasargod

PETITIONER/S:

GANGADHARAN.A
AGED 63 YEARS
AYYENKEEL HOUSE, PAYYANUR AMSOM DESOM KELOTH PO,
PAYYANUR , KANNUR, KERALA
670307

BY ADV. SRI.S.S.ARAVIND

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA 682031

R1 BY PUBLIC PROSECUTOR

OTHER PRESENT:

SRI.AJITH MURALI -PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

Dated this the 4th day of December 2020

The applicant has approached this Court for anticipatory bail anticipating arrest in Crime No.37/2020 of Excise Range Neeleswaram for having allegedly committed offences punishable under Sections 55(g), 8(1) and (2) of the Kerala Abkari Act.

2. The prosecution case, in brief, is that on 04.04.2020 at about 11.15 a.m., the Excise officer, Neeleswaram Range and his party reached in front of a house, which is said to be in possession of the applicant and a shed situated in that property was searched and resulted in recovery of 2 litres of arrack and 110 litres of wash prepared for the purpose of distillation. The contraband articles were seized and the crime was registered. The applicant was not arrested. Apprehending that he may be arrested, he has approached this Court for anticipatory bail.

3. It is pointed out by the applicant that although the mahazar and the occurrence report was prepared on 04.04.2020, the same was received in the jurisdictional court only on

20.04.2020 and there is an unexplained delay of 16 days in producing the documents in the court, which falsify the prosecution case. Therefore the prosecution is not sustainable. Moreover it is pointed out that even though the occurrence is stated on 04.04.2020, the applicant has not yet been arrested, though he was available all along. He has no criminal antecedents and therefore he seeks anticipatory bail.

4. Heard the learned counsel for the applicant and the learned Public Prosecutor.

5. In view of the specific embargo under Section 41A of the Abkari Act and in view of the decision of the Supreme Court in **Muraleedharan v. State of Kerala** [2001 KHC 411] an application for anticipatory bail under the Abkari Act cannot be entertained. Hence, applicant is directed to surrender before the investigating officer within two weeks and after interrogation in case he is arrested, he shall be produced before the jurisdictional court. He will be at liberty to apply for a regular bail before the jurisdictional court, which shall be considered and preferably disposed of on the very same date, considering the fact whether

he is entitled to the benefit of proviso under Section 437 of Cr.P.C. He is a senior citizen aged 63 and also keeping in view the decision of this Court in **Sukumari v. State of Kerala** [2001 (1) KLT 22].

Sd/-

ASHOK MENON

JUDGE

rmm