

**GavIn M.i. Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jul-01-2013

**Judge :** Honourable Mr.Justice S.S.Satheesachandran

**Appellant :** GavIn M.i.

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN MONDAY, THE 1ST DAY OF JULY 2013 10TH ASHADHA, 1935 Bail Appl..No. 4373 of 2013 () ----- CRIME NO. 41/2013 OF KAYAMKULAM EXCISE RANGE OFFICE , ALAPPUZHA PETITIONER/ACCUSED NO.5: ----- GAVIN M.I. AGED 3 YEARS S/O. INNOCENT, MATHALIL HOUSE, PANANGADU MURI KUMBALAM VILLAGE, KANAYANNUR TALUK ERNAKULAM DISTRICT. BY ADVS.SRI.S.RAJEEV SRI.K.K.DHEERENDRAKRISHNAN RESPONDENT/STATE: ----- STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM-682031. (CRIME NO. 41/2013 OF KAYAMKULAM EXCISE RANGE ALAPPUZHA DISTRICT. BY PUBLIC PROSECUTOR SMT.LALIZA.T.Y THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01-07-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: S.SATHEESACHANDRAN, J ----- B.A No.4373 of 2013 ----- Dated this the 1st day of July, 2013

## ORDER

Petitioner is accused No.5 in Crime No.41/2013 of Kayamkulam Excise Range, registered for offences punishable under Sections 55(a) (i) and 67(b) of the Kerala Abkari Act. He has filed the above application seeking his release on bail under Section 439 of the Code of Criminal Procedure (for short 'the Code').

2. Allegation is that getting reliable information over illicit transportation of spirit in motor vehicles, on the night of 17.5.2013 at about 11.30 pm, an excise party reached Texmo Junction in Kayamkulam. Two vehicles parked beside the public road were seen with some persons allegedly shifting cannases from one vehicle to other. Five among these involved were apprehended, while another ran away. Seven cannases, each having 35 liters of spirit, were being transported from one vehicle to the other. Contraband was seized into custody and persons restrained B.A No.4373 o

2. were arrested. Registering the crime the arrested accused were produced before the Magistrate, who remanded them to judicial custody.

3. Learned counsel for the petitioner submits that petitioner is a mechanic and one of the vehicles seized in the crime belongs to his father. That vehicle was plied as a taxi and getting information that vehicle had broken down, he reached the spot. He had no connection with the transportation of spirit in the motor vehicle and he was falsely implicated in the crime as a co-accused, is the submission of the counsel to urge for granting him bail. He is prepared to abide by any condition imposed by this Court, is the further submission of counsel.

4. Opposing the application, learned Public Prosecutor submitted that petitioner (A5) was found seated in one of the vehicles while the other accused were engaged in shifting cannas containing spirit from one vehicle to the other. Materials gathered by investigating agency disclose complicity of petitioner in the grave offences imputed, and B.A No.4373 o

3. having regard to the quantity of the spirit illicitly transported in the vehicles, petitioner is not entitled to be released on bail, at this stage, when investigation is

continuing, is the further submission of the learned Public Prosecutor.

5. Grant of bail to a person suspected of committing an offence under the Abkari Act is governed by the interdictions imposed by Section 41(A) of the Abkari Act. Where a person is suspected to have committed an offence under the Act that the aforesaid Section stipulates that his bail can be ordered only when there is reasonable ground to presume his innocence and also that he is unlikely to commit the offence if released on bail. Petitioner has a defence to be canvassed cannot be given unmerited consideration without having regard to the facts and circumstances presented with reference to the materials collected by the investigating agency. Case Diary has been produced for my perusal. After looking into the case diary with reference to the submissions made, I find there are B.A No.4373 o

4. enough grounds to suspect complicity of petitioner in the offences imputed and when that be so, petitioner is not entitled to released on bail at this stage. Petition is dismissed. S.SATHEESACHANDRAN Judge ab

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