

Bineesh vs State of Kerala

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Court : Kerala Orders

Decided On : Nov-28-2022

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : Bail Appl./9111/2022

Appellant : Bineesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
MONDAY, THE 28TH DAY OF NOVEMBER 2022 / 7TH AGRAHAYANA,
1944 BAIL APPL. NO. 9111 OF 2022 CRIME NO.73/2022 OF
Vandiperiyar Excise Range Office, Idukki AGAINST THE
ORDER/JUDGMENTCRM 834/2022 OF DISTRICT COURT &
SESSIONS COURT,THODUPUZHA PETITIONERS/ACCUSED NOS.2
AND 3: 1 BINEESH,AGED 38 YEARS,S/O. KUTTAPPAN, IRUMALAYIL
HOUSE, VATTAKUNNELKADA KARA, PERIYAR VILLAGE, IDUKKI
DISTRICT 685507 2 VIJAYAN,AGED 62 YEARS,S/O.
KRISHNANKUTTY, IRUMALAYIL HOUSE, THULASIPPARA,
ERATTAYAR 685514 BY ADVS. BIJU .C. ABRAHAM THOMAS

C.ABRAHAM RESPONDENT/STATE: STATE OF KERALA
REPRESENTED PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682031 BY PUBLIC PROSECUTOR SRI.M.C.ASHI
THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
28.11.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

VIJU ABRAHAM, J.

B.A. No.9111 of 2022 Dated this the 28th day of November, 2022

ORDER

This is an application for anticipatory bail.

2. Petitioners are arrayed as accused Nos. 2 and 3, in Crime

No.73 of 2022 of Excise Range Vandiperiyar, Idukki District, registered alleging commission of offences punishable under Sections 55(a) and 55(g) of the Kerala Abkari Act.

3. The prosecution allegation is that on 15.08.2022 at about

02:00 p.m. the 1st accused was found in possession of 90 litres of spirit, 600 litres of wash and utensils for manufacturing arrack. The contraband was seized and the 1st accused was arrested and in his confession statement, it is stated that accused Nos.2 and 3 also have an active role in the commission of the offence and thereby committed the aforesaid offences.

4. I have heard the learned counsel appearing for the petitioners as also the learned Public Prosecutor.

5. The learned counsel appearing for the petitioners submits

that they have been falsely implicated in the abovesaid crime. It is only based on the confession statement of the co-accused that they have been arrayed as accused. The learned counsel for the petitioners would further submit that they

have absolutely no connection with the alleged incident and at the time of alleged incident they were not in town. Further that even though 1st petitioner is involved in two other Abkari offences, they are only minor offences punishable with fine and therefore the antecedents cannot be taken as a reason for dismissing the bail application. Further it is submitted that 1st accused is already arrested and recovery is already effected and therefore, custodial interrogation may not be required for the purpose of investigation.

6. The learned Public Prosecutor upon instructions submitted

that the investigation revealed that all the accused together procured the alleged contraband. It is also revealed on verification of the call details that all the accused were in constant contact over phone. The investigation so far revealed that they were found together at the alleged place of occurrence. Even though notice under Section 48 of the Abkari Act was issued, they did not appear before the investigating officer.

Considering all these aspects, this Court has earlier rejected the bail applications of the petitioners as per Annexure 2 order and I find no justifiable reason to take a different view than taken before, especially taking into consideration the large quantity of contraband involved. Therefore, the bail application is accordingly dismissed. Sd/- VIJU ABRAHAM JUDGE cks

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