

Manojkumar vs State of Kerala

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Court : Kerala

Decided On : Jun-30-2020

Judge : Honourable Mr. Justice Ashok Menon

Appeal No. : Bail Appl./3138/2020

Appellant : Manojkumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ASHOK MENON
TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942 Bail
Appl.No.3138 OF 2020 AGAINST THE ORDER/JUDGMENT IN TN
255/2020 OF DISTRICT COURT & SESSIONS COURT, ERNAKULAM

AGAINST THE ORDER/JUDGMENT IN CMP 85/2020 OF JUDICIAL
FIRST CLASS MAGISTRATE COURT,
CHOTTANIKKARA(TEMPORARY) CRIME NO.372/2020 OF
CHOTTANIKKARA POLICE STATION , Ernakulam PETITIONER/1ST
ACCUSED: MANOJKUMAR, AGED 37 YEARS, S/O. GOPI,
KUNNATHU VEETIL, CHOTTANIKKARA KARAYIL, KUREEKKADU
VILLAGE. BY ADVS. SRI.T.K.RAJESHKUMAR SRI.T.S.SREEKUMAR

RESPONDENT/COMPLAINANT: STATE OF KERALA REP. BY STATION HOUSE OFFICE, CHOTTANIKKARA POLICE STATION, ERNAKULAM DISTRICT, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

OTHER PRESENT: SMT.K.K.SHEEBA, PP FOR ADGP THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 12.06.2020, ALONG WITH Bail Appl.3251/2020, THE COURT ON 30.06.2020 PASSED THE FOLLOWING: -
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ASHOK MENON TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942 Bail Appl.No.3251 OF 2020 CRIME NO.372/2020 OF CHOTTANIKKARA POLICE STATION , Ernakulam PETITIONER/2ND ACCUSED: ABDUL SALAM, AGED 34 YEARS, S/O. ABOOBACKER, AMMINIPARAMBIL VEETIL, ASOKAPURAM, ALUVA VILLAGE. BY ADV. SRI.NIREESH MATHEW RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY STATION HOUSE OFFICER, CHOTTANIKKARA POLICE STATION, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN-682031. SMT.K.K.SHEEBA, PP FOR ADGP THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 12.06.2020, ALONG WITH Bail Appl.3138/2020, THE COURT ON 30.06.2020 PASSED THE FOLLOWING: -3-

COMMON ORDER

[Bail Appl.3138/2020, Bail Appl.3251/2020] Dated this the 30th day of June 2020 Applications for regular bail under Section 439 of the Cr.P.C.

2. The petitioner in B.A.No.3138/2020 is the 1st accused and the petitioner in B.A.No.3251/2020 is the 2nd accused in Crime No.372/2020 of Chottanikkara Police Station for having allegedly committed the offence punishable under Section 55(a) of the Abkari Act initially, and subsequently, under Sections 55(i) and 62 of the Act were also incorporated.

3. The prosecution case in brief is that on 29.04.2020 at about 4.55 PM the 1st accused was found to be in possession of 2495 litres of spirit stored in his house at Kureekkad Village. He was arrested on that

day and remanded to judicial custody. On 30.04.2020 the 2nd accused was arrested for the allegation that he is the person who transported the said contraband to the 1st accused in a vehicle. The contraband articles -4-

contained 499 small cans of spirit con

bottles by See Bhal Mikelin Distillery Pvt.Ltd., Goa. The police officials confirmed that it was spirit and prepared Annexure-A search list. The 1st accused mentioned that the contraband articles were sanitizers and he also produced bills/invoices indicating that the goods were delivered to him by M/s NAAJ Medicals, Company, Aluva. However, not being satisfied with the explanation offered by the 1st accused, the police officials proceeded with the case. The petitioner states that they are innocent and that 1st accused is a representative of M/s NAAJ Medicals, a company having a valid GST registration and deals with various medicines, drugs, including masks and hand sanitizers. In consequence to the outbreak of COVID-19 pandemic,

there was huge demand for mask and sanitizer, and accordingly, they were brought under the valid licence -5- from Goa. Chemical name of hand sanitizers are Cluo Hand Sanitizer and Anton Braniff Hand Sanitizer respectively, and the components of Anton Braniff are 70% Ethanol, Glycerine, Hydrogen Peroxide and water, added with perfume; while in Cluo Hand Sanitizer, the ingredients are 70% Ethanol with Glycerine, water and colour.

4. The Government of India had issued special

order as S.O.1087/E dated 13.03.2020 by the Ministry of

Consumer Affairs, Food and Public Distribution, including surgical masks and hand sanitizers under

the Essential Commodities Act, 1955.

As

dated 19.03.2020 of Government of India at Annexure A2 in the above B.A. allows production and distribution of hand sanitizers by virtue of the powers conferred under Sub-section 2A and Section 3 of the Essential Commodities Act. Annexure A3 in the above B.A. is the copy of the provisional manufacturing licence No.989 dated 24.03.2020 issued by the Ministry of Food and Drug Administration, Government of Goa. -6-

5. Annexure A5 in above B.A. is a copy of the invoice in favour of M/s NAAJ Medicals for purchase of

the articles. Delivery to M/s NAAJ Medicals was made in accordance with the statutory formalities required, including payment of GST and e-Way bills (Annexure A6). The 1st accused had taken delivery of denatured spirit in the form of hand sanitizer from the master supplier M/s NAAJ Medicals and supplies it to various distributors in the local market. Due to Kottayam being declared a Red Zone, the border between Ernakulam and Kottayam was closed. Hence, the 1st accused was not in a position to supply those hand sanitizers there and temporarily unloaded the same at his residence at Chottanikkara for the sake of convenience, intending to be shifted to Kottayam District once the border was opened. It was at that time, that the police from Chottanikkara Police Station came to the residence of the petitioner and inspected the premises and misunderstood that the liquid hand sanitizer was plain spirit. In consequence of that, the Station House Officer, Chottanikkara Police Station registered the -7-

crime. The 1st accused was arrested and remanded to judicial

custody. The case was dismissed on 06.05.2020 vide Annexure A8 in the above B.A.

6. It is submitted on behalf of the 1st accused that Rule 8 of the Kerala Rectified Spirit Rules, 1972 allows release of rectified spirit from the distillery

without payment of any dues for the
contended sanitizers and it does not attract under the penal provisions of Abkari Act.

7. The 2nd accused submits that he is innocent and had nothing to do with the acquiring of the spirit or sanitizer and he too has produced photocopies of the manufacturing licence to the distillery as also the copies of invoice along with way-bills. It is submitted that he was only the driver of the vehicle -8- and had the required bills/invoice to transport the

articles, and therefore, his role is ve

Sessions Court too dismissed the bail vide Annexure A9. The learned Sessions Judge also dismissed the application for bail vide Annexure G. It is submitted that the petitioner does not have any antecedents and that he may be released on bail.

8. In support of the prosecution story is that the contraband articles was intended to be used for manufacture of illicit arrack and IMFL, the learned Public Prosecutor appearing for the State very vehemently opposes the granting of bail to the accused. It is pointed out that the Inspector of Police,

Chottanikkara Police Station had received a secret information that spirit was stored unauthorisedly in the house of the 1st accused and in consequence of that, he had conducted a search of the house and recovered -9-

the aforesaid quantity of spirit. It is a

revealed that he has no experience with the marketing

and production of hand sanitizers or

transported the spirit, was revealed, in consequence of which he was arrested. It is submitted that the 6 th accused Siyad is closely associated with the 2 nd accused in transporting the spirit. The names of Indian Roller Deluxe Rum and Indian Roller Deluxe Whiskey were provided on the cartons, which was loaded into the vehicle, though the 2nd accused has noticed that, he did not question or suspect anything about the contents of the load. He also had concealed the load with plastic sheet so as to hide it from the view of the public as well as the police. The learned Public Prosecutor -10-

would further indicate that the bill in favour of the 1st accused was only for 290 cans, but what was loaded into the vehicle and delivered to him was 499 cans. The 1st accused did not questioned about the quantity in excess of the bill, which would indicate that the 1st accused as well as the 2nd accused were glove in hand

for transporting the contraband articles. During the investigation, it was revealed that Abdul Jaleel, who is the owner of M/s NAAJ Medicals is an accused in Crime No.934/2020 of Kalady Police Station and his drug licence expires on 25.11.2020. It is submitted by the learned Public Prosecutor that sanitizers without any licence is spirit and as per the licence referred to above, the owner of M/s NAAJ Medical is only licensed to sell, store or exhibit for sale or distribution of retail drug as per Drugs and Cosmetics Rules, 1945. It is also submitted that the bill produced by the 1st accused purportely to be that of M/s NAAJ Medicals was fake and it did not contain the licence number, which is mandatorily to be mentioned as per the Rules. The owner of M/s NAAJ Medicals has also violated the rules -11- by allegedly selling the stock to the 1st accused for

the reason that he did not have the

Regikumar is a notorious criminal and is involved in several abkari cases and he is acquainted with the 1st accused and that is how they hatched the conspracy to transport spirit under the guise of it being hand sanitizer. In Crime No.934/2020 of Kalady Police Station, it is revealed that the accused persons there had used the very same spirit as liquor and sell it for human consmption as IMFL. It is the very same product, which was seized from Chottanikkara in the instant cae from the 1st accused, the stickers of the can were also similar. From these, what could be deduced was that the actual motive of the 1st accused was to distribute spirit as IMFL or illicit arrack under the guise of it being hand sanitizers. The 2nd accused had knowingly transproted the said articles and for that reason he is also equally liable. -12-

9. After having heard both sides, I find that the picuture is not as rosy as projected by the accused. The fact that Kottayam District was declared as Red Zone was known to the 1st accused. The 2nd accused also knew where he had to transport the articles loaded in

his vehicle.

The 1st accused admittedly did not have lic

articles.

10. The argument of the learned Counsel for the 2 nd

accused that there is no chemical examination report to confirm that the contraband articles seized is not hand sanitizer and is actually spirit, and therefore, the prosecution case has not legs to stand on. It is however pertinent to note that the bills were only for transporting and selling of 290 cans; whereas what was

found stored was 499 cans. The stock is connected to crime registered at Kalady Police Station, in which the -13- authorities had seized spirit being sold as IMFL. The clandestine manner in which the petitioners herein had transproted the articles to Chottanikkara also incidates that their intentions were not as holy as is

attempted to be portrayed by the accused.

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they do not within the stipulated time complete the investigation, the accused are at liberty to approach the jurisdictional Court for statutory bail as provided under Section 167(2) of the Cr.P.C. Releasing the accused at this point in time would give a wrong signal to the society at large, which needs to be protected from the illicit liquor which flows in hampering the health of the common man. I am therefore, of the view that the bail applications need to be dismissed and I do so.

Sd/- dkr ASHOK MENON JUDGE

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