

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHIRCY V.

TUESDAY, THE 31ST DAY OF AUGUST 2021 / 9TH BHADRA, 1943

BAIL APPL. NO. 6169 OF 2021

C.R.NO.53/2020 OF THANKAMANY EXCISE RANGE, IDUKKI

PETITIONER/ACCUSED :-

TOMY AUGUSTINE,
AGED 50 YEARS
S/O. AUGUSTINE,
CHERUNILATH PUTHANPURACKAL HOUSE,
MANGAPPARA KARA, KONNATHADI P.O,
IDUKKI 685 563.

BY ADV V. SRI NATH

RESPONDENTS :-

- 1 STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, KOCHI 31.
- 2 THE EXCISE INSPECTOR,
THANKAMANY EXCISE RANGE,
IDUKKI .

SRI.MANU.PG- SR.P.P

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
31.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The petitioner who is the sole accused in C.R. No.53 of 2020 of Thankamany Excise Range, Idukki District registered for the offences punishable under Sections 8(1) and 8(2) of the Kerala Abkari Act, has moved this application apprehending arrest.

2. The prosecution allegation is that on 16.06.2020 at about 2.00 pm the Excise Inspector and his team on getting reliable information that illicit liquor has been stored in the residential house of the petitioner, conducted a search in the house and seized 5 litres of illicit arrack kept in the hall of the said building in contravention of the provisions of the Abkari Act. Thus the crime was registered against him. The petitioner could not be apprehended then and there as he fled away from the place of occurrence.

3. Heard the learned counsel for the petitioner as well the learned Public Prosecutor.

4. According to the learned counsel for the petitioner he has not committed any offence as alleged by the prosecution. But he has been falsely implicated in the case for no reason and hence this application.

5. The learned Public Prosecutor vehemently opposed the application.

6. On going through the records, I could find a strong *prima facie* case against this petitioner. Of course, the contraband involved in the case is only 5 litres but it is illicit arrack and it was detected from the residential house owned by this petitioner.

Having regard to the nature of accusation levelled against the petitioner as well other facts and circumstances involved in this case, I do not think that this is a fit and appropriate case in which the discretion of the court can be exercised as prayed for. Only in exceptional cases the power under Section 438 Cr.P.C can be granted. This is not a case coming under the said category. Hence, he is

not entitled to get pre-arrest bail as prayed for by the petitioner.

Accordingly, this bail application stands dismissed. The petitioner could very well surrender before the investigating officer and co-operate with the investigation of the case.

sd/-

**SHIRCY V.
JUDGE**

SMA