

(2022) 01 KL CK 0172
In the High Court Of Kerala
Case No : Bail Application No. 28 Of 2022

Aneesh

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 21-01-2022

Acts Referred:

Kerala Abkari Act, 1967 — Section 55(a)
Indian Penal Code, 1860 — Section 202
Kerala Police Act, 2011 — Section 118(b)

Citation : (2022) 01 KL CK 0172

Hon'ble Judges : Gopinath P, J

Bench : Single Bench

Advocate : Shajin S.Hameed, Seetha .S

Final Decision : Dismissed

Judgement

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Gopinath P., J

1. This is an application for regular bail.
2. The petitioner is the 1st accused in Crime No.1027 of 2021 of Ambalapuzha Police Station, Alappuzha District, alleging commission of offences under Section 55(a) of the Abkari Act and Section 202 of the Indian Penal Code and Section 118(b) of the Kerala Police Act, 2011.
3. The allegation against the petitioner stems initially from a complaint made by the 2nd accused, who is stated to be the owner of a lorry bearing registration No.KL-20/Q-3562 that while transporting fish from Tanur to Madurai, the lorry was stolen by a group of people, who intercepted the lorry near the Thottappally spillway. The petitioner was the driver of the lorry. On questioning the petitioner, it is alleged that the petitioner confessed that

the lorry was carrying 2800 liters of spirit to be delivered to some people in Kollam. On the basis of the aforesaid information, the crime was

registered as above. The facts show that a complaint by the 2nd accused that his lorry was stolen has resulted in the aforesaid crime being registered

against the 2nd accused, the petitioner herein and also three other unidentified persons.

4. The learned counsel for the petitioner submits that despite the fact that the petitioner has been in custody from 06.12.2021, no recovery has been

effected by the police, either of the lorry or of the spirit, which was allegedly carried on the lorry. It is submitted that till such recovery is made, any

statement given by the petitioner confessing that the lorry was carrying spirit is not admissible in evidence. It is submitted that as on date, the crime

registered invoking the provisions of the Abkari Act cannot be sustained.

5. The learned Public Prosecutor, on instructions, submits that the investigation conducted thus far shows that the petitioner and the 2nd accused had

gone to Mangalore and had procured the spirit from there. It is submitted that the details of the stay of the petitioner and the 2nd accused in

Mangalore and the details of the vehicle passing through various check posts etc have already been collected by the prosecution. It is submitted that

every effort is being made to trace out the lorry and spirit which was being carried on it. It is submitted that as per the information available to the

investigating officer, while the 2nd accused was not aware that the lorry would be intercepted and taken away by the three unidentified persons(A3,

A4 and A5), the petitioner was well aware of the identity of A3, A4 and A5 and he had even given names of A3, A4 and A5 to the investigating

officer. It is submitted that the grant of bail at this stage will affect the progress of investigation as recovery of the lorry and the spirit is imperative.

6. Having heard the learned counsel for the petitioner and the learned Public Prosecutor and having considered the facts and circumstances of the

case, I am prima facie of the opinion that unless the information given by the petitioner while in custody leads to recovery of the spirit in question, the

offence alleged under the provisions of the Abkari Act may not be sustainable. I am also of the opinion that if after nearly 45 days in custody, the

information given by the petitioner has not led to any recovery, it is unlikely that such recovery can be made even if the petitioner is continued in

custody. In that view of the matter, I am inclined to grant bail to the petitioner subject to the condition that he will, on his release, report before the

investigating officer Crime No.1027 of 2021 of Ambalapuzha Police Station, Alappuzha District, at 09.00AM for the period from 24.01.2022 till

04.02.2022 and thereafter whenever called upon to do so.

7. In the result, this bail application is allowed and it is directed that the petitioner shall be released on bail subject to the following conditions:

(1) The petitioner shall execute bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum to the satisfaction of the

Jurisdictional Court;

(2) Petitioner shall co-operate with the investigation and shall report before the investigating officer in Crime No.1027 of 2021 of Ambalapuzha Police Station,

Alappuzha District, at 09.00AM for the period from 24.01.2022 till 04.02.2022 and thereafter whenever called upon to do so;

(3) The petitioner shall not attempt to interfere with the investigation or to influence or intimidate any witness in Crime No.1027 of 2021 of Ambalapuzha Police

Station, Alappuzha District;

(4) The petitioner shall not involve in any other crime while on bail.

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If any of the aforesaid conditions are violated, the investigating officer in Crime No.1027 of 2021 of Ambalapuzha Police Station, Alappuzha District,

may file an application before the Jurisdictional Court for cancellation of bail.