

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 16<sup>TH</sup> DAY OF MAY 2023 / 26TH VAISAKHA, 1945

BAIL APPL. NO. 3344 OF 2023

CRIME NO. 104 OF KADANADU POLICE STAQTION, ERNAKULAM

PETITIONER/ACCUSED:

JOLLY VAERGHESE  
AGED 51 YEARS  
S/O. VARGHESSE, CHIANGARA HOUSE,  
CHUNDAKKUZHI, MUDAKKUZHA, VENGOOR WEST,  
ERNAKULAM, PIN - 686574

BY ADVS.  
SRUTHY N. BHAT  
NIKITA J. MENDEZ

SRI.VIPIN NARAYAN, Sr.P.P

RESPONDENT/COMPLAINANT:

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM PIN - 682031

BY PUBLIC PROSECUTOR

OTHER PRESENT:

SRI.VIPIN NARAYAN, Sr.P.P

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
16.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**V.G.ARUN, J.**

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B.A.No. 3344 of 2023  
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Dated this the 16<sup>th</sup> day of May, 2023

**ORDER**

This is an application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure, 1973.

2. The petitioner is the sole accused in Crime No. 104/2023 of Kodanadu Police Station, Ernakulam, registered for offences punishable under Section 55(i) of the Kerala Abkari Act.

3. The prosecution allegation is that, at about 06.00 pm, on 11.03.2023, the petitioner was found in possession of 2.75 liters of Indian Made Foreign Liquour (for short 'IMFL') intended for sale. The prosecution alleges that, on seeing the excise party, the petitioner ran away from the spot.

4. The learned counsel for the petitioner submitted that, the even accepting the prosecution allegation in its entirety, no offence under Section 55(i) is made out since,

there is nothing to indicate that the petitioner had indulged in sale of liquor. It is also submitted that the 2.75 litres of Indian Made Foreign Liquour, allegedly recovered, is within permissible limits.

5. Learned Public Prosecutor also who submitted that the petitioner was earlier implicated in a crime alleging commission of offence under Section 55(a) of the Kerala Abkari Act.

6. There is prima facie merit in the contention that mere possession of the Indian Made Foreign Liquour, that too within permissible limits, cannot lead to a presumption that the liquor was intended for sale. The sale should be *in presenti*, for the offence under Section 55(i) to be attracted. No doubt, that is a matter to be decided by the trial court. The contraband has already been recovered also.

In the result, the bail application stands disposed of as under:

The petitioner shall surrender before the investigating officer within two weeks. On surrender, the petitioner shall be interrogated and produced before the jurisdictional court

on the same day. The petitioner is at liberty to move an application for bail at that point of time and in such event, the learned Magistrate shall consider the bail application and pass appropriate orders thereon, preferably on the same day.

Sd/-  
**V.G.ARUN,**  
**JUDGE**

mtk