

**IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE -I,
SULTHAN BATHERY**

Present:- Ms. Adheena Biju,
Judicial First Class Magistrate-I, Sulthan Bathery

Friday, this the 18th day of September, 2026
28th day of Bhadra, 1948

CMP No. 01/2026

(In Kalpetta Excise Range Crime No. 154/2026)

Petitioner/ Accused	:	Anto Augustine, Aged 38/26, S/o Augustine, Flat No. 12B, Joy Alukkas Golden Tower, Vazhakkala, Ernakulam. (By Adv. Sri. A.J. Antony)
Respondent/ Complainant	:	State represented by the Excise Inspector, Kalpetta Range in crime No.154/2026. (By Sri. Abdul Hassan T- APP Gr.II))
Offence	:	U/s.s 55(a), 55(i) and 58 of Kerala Abkari Act.
Order	:	Petition is dismissed.

The application for bail having come up for consideration before this Court on 17.09.2026, the Court on 18.09.2026 passed the following:

O R D E R

This is an application filed under Section 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. The prosecution case, in brief, is that at about 2:45 PM on 16.09.2026, the respondent/complainant, Excise Inspector, Kalpetta Range conducted a search at the residential house of the accused bearing building

No. 10/603 of Muttill Grama Panchayat, namely Anto Augustine, son of Augustine, Moonganani House, situated in the Karappuzha area within Muttill Grama Panchayat, Muttill South Village. During the course of the search, the detecting officer/Excise Inspector allegedly found in the rooms of the said house, 43.850 litres of Foreign Made Foreign Liquor, 1.224 litres of Foreign Made Foreign Wine, 6.250 litres of KSBC wine, 750 ml of Indian Made Foreign Liquor stated to have been purchased from the canteen, and 12.750 litres of liquid containing alcohol. It is alleged that all the aforesaid articles were seized by the Kalpetta Excise Circle Inspector in accordance with law and, on the basis of the said detection and seizure, the above crime was registered against the accused u/s.s 55(a), 55(i) and 58 of Kerala Abkari Act.

3. The petitioner/accused was arrested on 17.09.2026 at 5:00 AM and was produced before this Court at 4:55 PM on the same day.

4. Notice of the application was issued to the learned Assistant Public Prosecutor.

5. Learned counsel for the accused submitted that the accused has committed no offence whatsoever and that he has been falsely implicated in the case pursuant to a high-level conspiracy. It is contended that the alleged contraband articles were not recovered from the conscious possession of the accused. According to the learned counsel, the house from which the alleged contraband was seized belongs to Smt. Lilly, wife of Jose, Kadayilthattila House, Nenmeli, as evidenced by the sale certificate produced along with the petition. It is further submitted that, as is evident from the documents relied upon by the prosecution, the accused was not

present at the premises at the time of the alleged search and seizure. The search warrant issued by Kalamassery Police Station in Crime No.734/2026 specifically shows that the accused has been residing with his family at the address mentioned therein. Therefore, according to the learned counsel, there is no material to establish that the accused was physically present at the premises at the time of the alleged seizure or that he had any personal knowledge regarding the alleged contraband articles kept therein. Learned counsel further submitted that even the complainant was not certain as to whether the liquid allegedly seized from the premises was illicit liquor. It is contended that the complainant merely presumed, without adopting any scientific method of examination, that the liquid was illicit liquor. According to the learned counsel, the possibility that the liquid was fruit juice cannot be ruled out and there is also a possibility that the articles were planted by the officials with the ulterior motive of implicating and securing the remand of the accused. It is further submitted that, as per the seizure mahazar, items Nos. 58 to 70 were bottles bearing labels of foreign brands of liquor, similar to those allegedly found among items Nos.1 to 57. However, the details relating to the seal, hologram, batch number and other identifying particulars of the bottles have not been recorded. Learned counsel contended that such omission is deliberate and casts serious doubt upon the genuineness of the alleged seizure.

6. It is further argued that the arrest memo and arrest intimation mention 12.750 litres of homemade wine and the same is not seen reflected in the seizure mahazar or concurrence report. Since the complainant knew the search was of a private residence, the mandatory requirements of

Section 103 BNSS were not strictly followed, vitiating the search. The independent witnesses were not called in advance but were mere chance witnesses. When the complainant arrived, the police and revenue officials were already present and showed him the contraband, yet none of them signed the seizure mahazar. The learned counsel contends that these circumstances raise serious doubt about the genuineness of the recovery and support the claim that the articles were planted. Nothing incriminating was found in searches conducted by other agencies at the accused's residence and establishment.

7. The learned counsel for the accused further submitted that, though the petitioner is involved in 41 cases at Meenangadi Police Station, he has been granted bail in all of them and all bail conditions have been duly complied with. It is further contended that the arrest intimation was not served on any close relative and the arrest memo does not disclose the grounds of arrest. Counsel also pointed out that the arrest was recorded at 5.00 a.m. on 17.09.2026, whereas the crime was registered at 4.46 a.m. on the same day, which, according to him, raises serious doubt regarding the prosecution version and the legality of the arrest.

8. The accused has permanently resided at the said address with his wife and family for over four years, is a local resident readily available to the investigating agency, and has never evaded investigation or fled justice. There is thus no likelihood of his absconding or interfering with the investigation. Counsel submitted that the prosecution case suffers from serious factual and procedural infirmities, the alleged recovery is highly

doubtful, and prayed that the accused be released on bail on suitable terms.

9. The learned Assistant Public Prosecutor opposed the application, contending that the ingredients of the offences punishable under Sections 55(a), 55(i) and 58 of the Abkari Act are prima facie attracted. It is submitted that there are prima facie materials to show that the house from which the contraband was seized belongs to the petitioner/accused and that the quantity of liquor allegedly seized was above the permissible limit. It is further submitted that the arrest formalities have been duly complied with. The learned Assistant Public Prosecutor further submitted that the investigation is still at its initial stage and that the release of the petitioner at this stage is likely to prejudice the investigation. It is also submitted that the petitioner is involved in several other criminal cases. Having regard to the antecedents of the petitioner and the nature of the present allegations, there is a reasonable apprehension that, if released on bail, the petitioner may indulge in similar offences, interfere with the investigation, influence or intimidate witnesses, or otherwise obstruct the due course of justice. It is further contended that the petitioner is an influential person. Accordingly, the learned Assistant Public Prosecutor prayed for dismissal of the application.

10. Heard the learned counsel for the petitioner/accused and the learned Assistant Public Prosecutor. Perused the case records and the materials available on record.

11. This court considered the contentions in detail. Primarily, it was vehemently argued that the mandatory arrest formalities as mandated under Sec. 47, 48 BNSS and the dictums laid down by the Hon'ble Supreme Court in **Pankaj Bansal v Union of India**, 2024 7 SCC 576, **Prabir Purakayastha v. State, NCT of Delhi**, 2024 8 SCC 254, **Vihaan Kumar v. State of Haryana**, 2025 SCC OnLine SC 269, **Mihir Rajesh Shah v. State of Maharashtra**, 2025 SCC OnLine SC 2356 as regards furnishing grounds of arrest to accused and to his relatives in writing, has not been complied with and that the non-compliance of the same entitles the accused to be released forthwith.

12. On perusal of the arrest documents, this court is satisfied that the grounds of arrest has been duly served to the accused in writing mandated under Section 47 of BNSS. The grounds of arrest has been intimated in writing to Mr. Afsal who is the staff working under the accused, as nominated by the accused. The grounds of arrest has been intimated to the wife of the accused Mrs. Bilha, and relative Mr. Sibin respectively over Whatsapp media as well. As per the decision of the Hon'ble High Court of Kerala in **Masum Sekh v. State of Kerala**, 2026 KHC 2239 and as per **Muhammed Fasil v. State of Kerala**, 2026 KHC 1712, it is amply clarified that arrest formalities are deemed to be substantially complied with if the grounds of arrest is duly communicated in writing to the relative of the accused over WhatsApp media. Precisely, the grounds of arrest has been intimated to three persons associated with the accused. Thus, the present case is not one where the petitioner was left uninformed of the grounds of his arrest or where persons associated with him were

kept unaware of his arrest. In view of the materials on record, this Court is satisfied that the mandatory arrest formalities are complied with, and the contention that the arrest is rendered illegal on this ground cannot be accepted at this stage.

13. Coming back to the jurisdiction of this court under Section 480 of the BNSS, 2023, the Hon'ble Supreme Court *in State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21, has held that while considering an application for bail, the Court is required to take into consideration, inter alia, the existence of a prima facie case, the nature and gravity of the accusation, the severity of the punishment, the possibility of the accused absconding, his character and antecedents, the likelihood of repetition of the offence, the possibility of witnesses being tampered with and the danger of justice being thwarted. Likewise, in **Prasanta Kumar Sarkar v. Ashis Chatterjee**, (2010) 14 SCC 496, the Hon'ble Supreme Court reiterated that the Court must apply its mind to the relevant circumstances while considering bail and must not grant bail mechanically. The Court is not expected to conduct a meticulous examination of the evidence at the stage of bail, but must ascertain whether a prima facie case is disclosed from the materials available on record.

14. Section 41A, Abkari Act mandates that where the offences alleged are cognizable or non-bailable in nature, bail can be granted only if the twin conditions stipulated under the provision are satisfied-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Precisely, to warrant the release of the accused, this court must be prima facie satisfied that there exists reasonable grounds pointing to the innocence of the accused and that he is not likely to commit it while on bail.

15. At the same time, this Court is conscious that an application for bail is not to be converted into a mini trial. The rival contentions regarding the ultimate evidentiary value of the seizure, the ownership or possession of the premises, the credibility of the mahazar witnesses, the correctness of the description of the seized articles, the nature and composition of the liquid allegedly seized and compliance with the statutory requirements of search are matters that require detailed appreciation of evidence. At this nascent stage, this Court is required only to ascertain whether the materials disclose a prima facie case and whether the circumstances justify release of the accused.

16. In the present case, the prosecution alleges recovery of a substantial quantity of liquor and other liquid substances from a residential premises stated to be connected with the petitioner. The prosecution relies upon the Building Certificate issued by the Muttal Grama Panchayat, while

the defence relies upon the sale certificate in favour of Smt. Lilly, wife of Jose, and disputes the petitioner's ownership, occupation or possession of the premises. At this stage, neither document can be treated as conclusive on the question of ownership or possession. The sale certificate relied upon by the defence is a relevant circumstance, but its effect cannot be conclusively determined at this stage. Equally, the Building Certificate relied upon by the prosecution cannot by itself be treated as conclusive proof of the petitioner's ownership or conscious possession. Likewise, the absence of the petitioner from the premises at the time of search does not, by itself, exclude the possibility of his dominion or control over the premises or the articles allegedly recovered therefrom. Whether the entire quantity recovered constitutes contraband, whether it was possessed for the purpose of sale, and whether the petitioner was in conscious possession thereof are matters requiring evidence appreciation at the stage of trial. However, the materials presently available disclose a prima facie basis to indicate that the building was in the possession of the petitioner, which further prima facie indicates his possible dominion or control over the contraband allegedly recovered.

17. The alleged defects in the seizure mahazar, including the absence of particulars regarding seal, hologram and batch number, cannot at this preliminary stage be treated as sufficient by themselves to reject the prosecution case. Similarly, the discrepancy regarding the description of 12.750 litres as homemade wine in the arrest memo and arrest intimation, and the alleged absence of such description in the seizure mahazar, requires evidence appreciation during trial. The evidentiary effect of such

omissions or discrepancies has to be assessed in the light of the complete case records and cannot, by itself, establish at this stage that the alleged recovery is fabricated. The contention based on Section 103 of the BNSS also requires consideration in the light of the statutory procedure governing search of a closed place. Whether there has been any material non-compliance with the said provision and its effect upon the evidentiary value of the alleged recovery are matters which cannot be finally determined merely on the basis of the submissions made at the bail stage. As regards the alleged discrepancy in the time of arrest, the materials presently referred to indicate registration of the crime at 4.46 a.m. on 17.09.2026 and arrest of the petitioner at 5.00 a.m. on the same day. On the basis of these timings alone, no inherent chronological inconsistency is apparent. The circumstances relating to the place and manner of arrest by itself does not warrant release on bail.

18. The investigation, according to the prosecution, is at an initial stage. The alleged recovery has been effected from a residential premises, and the precise connection of the petitioner with the premises and the seized articles, the source and intended destination of the liquor, the nature of the alleged liquid, the statements of the occupants and other witnesses, and the surrounding circumstances of the recovery are matters which may require further investigation. In such circumstances, this Court cannot, at this stage, conclude that the detention of the petitioner is wholly unnecessary. The said circumstance has to be considered along with the nature and quantity of the articles allegedly recovered, the stage of investigation, the criminal antecedents attributed to the petitioner and the

possibility of the petitioner influencing persons acquainted with the facts of the case or interfering with the investigation. The principles governing bail require consideration of all such circumstances cumulatively and not in isolation.

19. On an overall consideration of the materials presently available, this Court finds that the investigation is only at its nascent stage and having regard to the nature and quantity of the alleged recovery, the stage of investigation, the criminal antecedents attributed to the petitioner and the other circumstances emerging from the case records, this Court is not satisfied that the petitioner is entitled to the discretionary relief of bail at this stage and hence this court is not inclined to allow this petition.

In the result, the bail application stands dismissed.

(Pronounced by me in open court on this 18th day of September, 2026)

Sd/-

**JUDICIAL FIRST CLASS MAGISTRATE-I,
SULTHAN BATHERY**

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