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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 20TH DAY OF AUGUST 2025 / 29TH SRAVANA, 1947

CRL.MC NO. 6925 OF 2025

CRIME NO.27/2024 OF Kattakkada Excise Range Office,

Thiruvananthapuram

AGAINST THE ORDER/JUDGMENT DATED IN CP NO.185 OF 2024

OF JUDICIAL MAGISTRATE OF FIRST CLASS ,KATTAKADA

PETITIONER:

VISHNU

AGED 36 YEARS

RESIDING AT KUZHUVILA VEEDU, CHANDRAMANGALAM,
AMACHAL P.O, THIRUVANANTHAPURAM, PIN - 695572

BY ADVS.

SRI.M.R.SASITH

SMT.R.K.CHIRUTHA

SMT.ANJANA SURESH.E

SMT.REETHU JACOB

SMT.LIDHIYA GEORGE

SMT.HASNA JABIL

SMT.ANJITHA S.



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RESPONDENT:

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

OTHER PRESENT:

SRI. M.C. ASHI, SR.PP.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
12.08.2025, THE COURT ON 20.08.2025 PASSED THE FOLLOWING:



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V.G.ARUN, J

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Crl.M.C.No.6925 of 2025

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Dated this the 20th day of August, 2025

ORDER

The petitioner is the sole accused in Crime No.27 of 2024 registered at the Excise Range Office, Kattakkada for the offence punishable under Section 55(i) of the Abkari Act 1 of 1077, now pending as C.P.No.185 of 2024 on the files of the Judicial First Class Magistrate Court, Kattakkada. The crime is registered on the allegation that, on 08.05.2024, at 07:30 pm, the excise party found the petitioner selling Indian Made Foreign Liquor (IMFL) at his rented house and recovered 1 litre of IMFL from his possession. At the investigation stage, the petitioner moved applications seeking pre-arrest bail before the Sessions Court as well as this Court, but the same were dismissed as per Annexures A1 and A2 orders. The petitioner



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has approached this Court again, this time seeking an opportunity to surrender before the trial court and for a direction to consider his bail application on the day of surrender itself.

2. Learned counsel for the petitioner submits that even if this Court directs consideration of his bail application, the Magistrate may hesitate in view of the 2nd proviso to Section 232 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('the BNSS' for short). It is then contended that, if the learned Magistrate decides to consider the bail application, that should be based on the nature of allegations and the present circumstances, uninfluenced by the dismissal of his earlier applications for anticipatory bail. To buttress the argument, reliance is placed on the decision of this Court in **Sukumari v. State of Kerala** [2001 KHC 43].

3. The learned Public Prosecutor submitted that the petitioner was absconding throughout the investigation stage and having failed to appear on summons at the committal stage



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also, is not entitled for any lenient consideration. The learned Public Prosecutor also submitted that the 2nd proviso to Section 232 is not an embargo for considering the bail applications filed by the accused.

4. The primary question to be considered is whether the 2nd proviso to Section 232 of the BNSS (earlier Section 209 of the Cr.P.C) takes away the power of the committal court to consider even the bail applications filed by the accused. Being contextually relevant, Section 232 is extracted below;

"232. Commitment of case to Court of Session when offence is triable exclusively by it-

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

(a) commit, after complying with the provisions of Section 230 or Section 231 the case to the Court of Session, and subject to the provisions of this Sanhita relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Sanhita relating to bail, remand the accused to custody during, and until the conclusion of, the trial;



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(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session:

Provided that the proceedings under this section shall be completed within a period of ninety days from the date of taking cognizance, and such period may be extended by the Magistrate for a period not exceeding one hundred and eighty days for the reasons to be recorded in writing:

Provided further that any application filed before the Magistrate by the accused or the victim or any person authorised by such person in a case triable by Court of Session, shall be forwarded to the Court of Session with the committal of the case."

(underlining supplied for emphasis)

5. Thus, the first proviso to Section 232 requires the committal court to complete the proceedings within 90 days of taking cognisance, which period can be extended by the Magistrate upto a maximum of 180 days. The 2nd proviso casts a duty on the Magistrate to forward the applications filed by the accused or the victim to the Court of Session while committing the case. If the 2nd proviso is taken as a prohibition



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on the Magistrate's power to consider applications, including bail applications at the committal stage, that will deprive the accused of his right to seek bail till the case is committed to the Sessions Court. The right to seek bail, though not a fundamental right, is a statutory right supported by the broader concept of personal liberty under Article 21 of the Constitution of India. In the words of Justice Krishna Iyer; "the issue of bail is one of liberty, justice, public safety and burden on the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. Personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law" (see **Gudikanti Narasimhulu and Others v. Public Prosecutor** [(1978) 1 SCC 240]). The second proviso should therefore be interpreted purposively.

6. The following discussion in **Satendar Kumar Antil v. Central Bureau of Investigation and Another** [(2022) 10 SCC 51], leaves no room for doubt that, discretion is vested



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with the committal court under Section 209(a) and (b) of the Code to grant bail or to remand the accused;

"**47.** Section 209 of the Code pertains to commitment of a case to a Court of Session by the Magistrate when the offence is triable exclusively by the said court. Clauses (a) and (b) of Section 209 of the Code give ample power to the Magistrate to remand a person into custody during or until the conclusion of the trial. Since the power is to be exercised by the Magistrate on a case-to-case basis, it is his wisdom in either remanding an accused or granting bail. Even here, it is judicial discretion which the Magistrate has to exercise. As we have already dealt with the definition of bail, which in simple parlance means a release subject to the restrictions and conditions, a Magistrate can take a call even without an application for bail if he is inclined to do so. In such a case he can seek a bond or surety, and thus can take recourse to Section 88. However, if he is to remand the case for the reasons to be recorded, then the said person has to be heard. Here again, we make it clear that there is no need for a separate application and Magistrate is required to afford an opportunity and to pass a speaking order on bail."

7. Suffice it to say that Section 209(a) and (b) of the Code is retained as such in Section 232 of the Sanhita. As per sub-clause (a) of Section 232, the Magistrate's power to remand the



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accused to custody until commitment, is subject to the provisions relating to bail.

8. The second proviso to Section 232 does stipulate that the Magistrate should forward the applications filed by the accused or victim to the Court of Session with the committal of the case. If the proviso is interpreted as making it obligatory for the Magistrate to forward the bail applications also to the Sessions Court, that would render the power conferred under sub-clause (a) of Section 232 nugatory. The settled legal position is that a proviso has to be construed as a qualification and not as a contradiction of the main provision. The legal maxim *Ut res magis valeat quam pereat*, meaning 'the thing may rather have effect than be destroyed' will apply in such situations. The courts should therefore interpret Section 232 and its proviso in such manner as to give effect to the statute as a whole. Thus understood, the second proviso to Section 232, does not prohibit consideration of bail applications by the committal courts. Being so, the apprehension of the petitioner



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that the Magistrate will not consider his bail application is misplaced.

The Crl.M.C is accordingly disposed of, by directing the Judicial Magistrate of First Class, Kattakkada to consider petitioner's bail application in C.P.No.185 of 2024, and pass appropriate orders thereon, preferably on the day of filing itself.

V.G.ARUN, JUDGE



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APPENDIX OF CRL.MC 6925/2025

PETITIONER ANNEXURES

Annexure-A1	TRUE COPY OF THE ORDER IN CRL. MC NO 1332/2025 PASSED BY THE HON'BLE COURT OF THE ADDL. SESSIONS JUDGE-VI, THIRUVANANTHAPURAM DATED 23.05.2025.
Annexure-A2	THE TRUE COPY OF THE ORDER DATED 08.07.2025 IN BAIL APPL. 7482/2025 PASSED BY THIS HON'BLE HIGH COURT.
Annexure-A3	THE TRUE COPY OF THE ORDER IN CRL MC NO. 1220/2025 DATED 06.02.2025 PASSED BY THE HON'BLE HIGH COURT OF KERALA.