

GAHC010221812024



2024:GAU-AS:11184

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : AB/2809/2024

SHRI PRAG RAJ SINGLA AND ANR
S/O LATE TARSEM LAL SINGLA
R/O HOUSE NO. 30, SHIVA NIWAS,
BY-LANE NO. 1, AJANTA PATH, SURVEY BELTOLA, GUWAHATI, DIST.
KAMRUP (M), ASSAM
PIN-781028

2: SHRI TUSHAR SINGLA
S/O SHRI PRAG RAJ SINGLA
R/O HOUSE NO. 30
SHIVA NIWAS

BY-LANE NO. 1

AJANTA PATH

SURVEY
BELTOLA

GUWAHATI

DIST. KAMRUP (M)
ASSAM
PIN-78102

VERSUS

THE STATE OF ASSAM AND ANR.
REP BY THE PP, ASSAM

2:INSPECTOR OF EXCISE

NOONMATI CIRCLE

NOONMATI
GUWAHATI

DIST. KAMRUP (M)

PIN-78102

Advocate for the Petitioner : MR. K N CHOUDHURY, MS. L WANGSA, MS A DAS, MR D S DEKA, MR. T DEURI

Advocate for the Respondent : PP, ASSAM, MR. D GOGOI, MR D GOGOI(SC, EXCISE DEPT.)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

18.11.2024

1. Heard learned Senior Counsel Mr. K. N. Choudhury for the petitioners, namely (i) Prag Raj Singla, and (ii) Tushar Singla.
2. The petitioners have filed this application under Section 482 of the BNSS, 2023 with prayer for pre-arrest bail as they are apprehending arrest in connection with Noonmati Excise Case No. 06/2024 under Section 53(1)(a) & (d) of the Assam Excise Act, 2000.
3. Heard Mr. D. Gogoi, learned Standing Counsel for the Excise Department.
4. The FIR unfolds that on 22.06.2024 at about 7 PM, on a tip off, Kamrup (M) Excise Team caught a person named Dindayal Chaubey of Buxar district of Bihar near Khanapara with some suspected fake liquor bottle caps in his vehicle bearing registration No. AS-01FN-7200. He was taken to his residence at Forest

Gate, Narengi Tiniali and various objectionable items like suspected fake liquor bottle labels, fake liquor bottle caps, suspected flavor used for manufacturing alcoholic liquor, suspected caramel etc. were recovered from his residence. On being interrogated and confronted, he revealed that he was collecting the objectionable items to supply to one Sri Diganta Neog. It was further revealed that Diganta Neog was supposed to receive the items around 11.30 PM on the same date from Dindayal Chaubey from his residence. The Investigating Team waited for arrival of Diganta Neog and eventually caught him red handed while he was collecting and loading the objectionable items in his vehicle bearing registration No. AS-01DY-7220.

5. It was further alleged that both the miscreants were brought to Kamrup Metro Excise Office for further interrogation and during interrogation, it was unearthed that Sri Diganta Neog was running a network of supplying the aforementioned fake articles throughout the State of Assam and some other parts of Northeast India for manufacturing of spurious liquor causing huge loss to the State exchequer as well as endangering human life.

6. It was also unearthed that one fake liquor manufacturing unit is functioning at Kokrajhar district and another team went to Kokrajhar on 23.06.2024 as led by the Deputy Superintendent of Excise Kamrup Metro along with Sri Diganta Neog. One fake liquor manufacturing establishment was found

and huge quantity of fake labels, caps, ENA, caramel, empty plastic and glass bottles, mono cartoons and machines suspected to be used for fixing bottle caps and one blending vat, were recovered and seized.

7. It is submitted on behalf of the petitioners that nothing was recovered from them. They were not apprehended at the place of seizure. The petitioners are apprehending arrest as they have been roped in on the statement of coaccused. On 06.08.2024, a notice under Section 35(3) of the BNSS was issued against the petitioner No. 2.

8. The petitioners are manufacturers of PET bottle caps and aluminum caps in Assam and for the last 24 years they have been supplying bottles and caps to various industries such as FMCG, pharmaceutical, country liquor manufacturers etc. all over the Northeastern States. They have the required license and permission from the competent authority to run bottle manufacturing factory. They are reputed industrialists and have distinctive reputation. They have already cooperated with the investigation and they are willing to cooperate with the remaining part of investigation.

9. The learned Standing Counsel, Excise Department has submitted that no subsequent change of circumstance have been mentioned in this petition, despite the fact that earlier the petitioners prayer for Anticipatory Bail has been rejected by this Court vide order dated 17.09.2024, passed by this Court in AB

No. 2151/2024.

10. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***The State of Tamil Nadu Vs. S. A. Raja 2005 (8) SCC, 380***, wherein it has been observed that:-

" All these facts must have been stated by the respondent in his previous applications. When there was no change of circumstances, the learned Judge may not have granted bail to the respondent. In the Order passed on 14 2005 the learned Single Judge had stated that the respondent herein was likely to influence the witnesses. That order was challenged before this Court and this Court deemed to interfere with that order within a short period, the impugned Order was passed without adverting to any of the points dealt with by the learned Single Judge who declined to grant bail to the respondent."

11. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in ***Mohammad Shamim Khan Vs The State of Jharkhand in Special Leave to Appeal (Crl,) No.(s). 9449/2021***, vide order dated 16.12.2021, wherein it has been observed that:-

*"Even before us, the learned Counsel for the petitioner is unable to show any change of circumstances to invoke the jurisdiction of filing second application under Section 438 of the Code before the High Court.
We deprecate such practice of filing second application under Section 438 of the Code after the first being rejected.
We have heard learned Counsel for the petitioner and find no reason*

to interfere in our jurisdiction under Article 136 of the Constitution.”

12. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in ***G. R. Ananda Babu Vs. The State of Tamil Nadu & Anr. In SLP (Crl.) No. 213/2021***, vide order dated 28.01.2021, wherein it has been observed that:-

“As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.

To observe sobriety, we refrain from making any further observation, except to observe, that the impugned order, to say the least, is perverse; and also because no prejudice should be caused to respondent No.2 and affect the trial against him.”

13. In reply, the learned counsel for the petitioner has submitted that it is trite law that judgments are not to be read like a statute. Every observation is not ratio decidendi. The complaint of a case under the Excise Act cannot be considered at par with the complaints of other criminal cases, as in an Excise case, the complaint is finally filed after thorough investigation, and in this case, it is pertinent to note that the petitioners were not named as accused. It is further submitted that the

petitioner's house was searched but nothing was seized in connection with this case. Moreover, the offence is not a heinous offence.

14. The petitioners have also prayed for bail on the ground that the petitioner no. 1 is suffering from heart problem and the petitioner no. 2 is suffering from jaundice. Unlike, the allegation of the respondent, the petitioner is not evading to cooperate with the investigation but the petitioner is willing to co-operate with the investigation. If the petitioner is granted bail, he will definitely extend his cooperation by all means.

15. I have considered the submissions at the Bar with circumspection.

16. The allegation against the petitioners are of serious nature. Indeed selling spurious liquor results in health hazard. The submission of the learned Standing Counsel, Excise Department that there are incriminating materials against the petitioners being complicit cannot be ignored.

17. However, I have considered the age of the petitioner no. 1, who is a middle aged person and suffering from heart condition and is advised for hospitalization for coronary angiogram. Annexure-8 of the petition is the certificate issued by Dr. M. K. Keshan, a Senior Medicine Specialist from Guwahati. Thereby, the prayer for pre-arrest bail of petitioner no. 1 is

allowed.

18. However, in view of my foregoing discussions, I am not inclined to grant Pre-arrest bail to petitioner no. 2. No medical certificate has been annexed to support that the petitioner no. 2 is suffering from jaundice.

19. On the other hand, in the event of his arrest, the petitioner no. 1, Prag Raj Singla, aged about 57 years, shall be enlarged on bail of Rs. 50,000/-, with a suitable surety of like amount to the satisfaction of the arresting authority under the conditions that:-

- (i) The petitioners shall refrain from such activities with which they are alleged,
- (ii) The petitioners shall appear before the Investigating Officer on every fortnight till completion of investigation, and
- (iii) The petitioners shall not leave the jurisdiction of the Court without prior permission.

20. The pre-arrest bail prayer of the petitioner no. 2, Shri Tushar Singla is rejected at this stage.

JUDGE