

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2622 OF 2017

ORDER:

This petition is filed under Section 438 Cr.P.C by the petitioner/accused who is not arrayed as an accused in Crime No.4 of 2017 on the file of Prohibition and Excise Station, Bellampally, apprehending his arrest in connection with the above crime.

The brief facts of the case are that the Officers of Special Task Force, Hyderabad along with staff, as per the instructions of Director of Enforcement, Hyderabad, inspected Shop No.8 in Tapers Cooperative Society Group Bellampally belonging to one Kannaiah, Toddy Seller. The present petitioner is the licensee of 11 toddy shops and shop no.8 is one among them. The officers conducted spot test with chemicals and found no adulteration with Chloral hydrate. However, the officers drawn three toddy samples under the cover of panchanama for chemical analysis and registered two cases Crime No.4 of 2017 and Crime No.5 of 2017, alleging the petitioner is guilty of offence under Rule 27(1) of A.P. Excise (Grant of license to sell toddy condition of licence & Tapping of Excise Trees) Trees, 2007. Thereafter, it appears, Chemical Examiner, Regional Prohibition and Excise Laboratory, Hyderabad opined that the samples drawn from Toddy Shop No.8 are fermented toddy adulterated with Alprazolam.

As seen from the Crime Report No.04 of 2017 dated 09.01.2017, Crime No.04 of 2017 was registered against one Kannaiah S/o Ramaswamy for the offences punishable under

Excise Act. The learned Public Prosecutor for the State of Andhra Pradesh submits that, after receipt of analyst report, the section of law was altered from Rule 37(1) to Section 8(C) r/w 27 of NDPS Act. But, there is nothing to show that the petitioner has participated in the crime and his apprehension of arrest is based on any reasonable belief, except that he is a licence holder of toddy shop.

In paragraph 45 of **Shri Gurbaksh Singh Sibbia and Ors. v. State of Punjab**¹, the Supreme Court held that a blanket order of anticipatory bail cannot be granted and held as follows:

“We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is preposition No. (2). We agree that a 'blanket order' of anticipatory bail should not generally be passed. This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever." That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.

Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction under Section 438 (1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the

¹ AIR 1980 SC 1632

police to investigate into crimes reported to them can be avoided.”

Thus, from the principle laid down in the above judgment, when there is a reasonable belief of the petitioner’s arrest in connection with the above crime, based on tangible material, the Court can exercise power under Section 438(1) Cr.P.C. But, here, except contending that the petitioner is the President of Toddy Tappers Cooperative Society in whose favour licence was granted to 11 shops and inspection was conducted in respect of shop no.8 and samples were lifted where one Kannaiah was found mixing toddy. Therefore, the present petition is nothing but abuse of law and it is in contravention to Section 8(c) of NDPS Act, even if the section of law is altered, there is no tangible material in support of reasonable belief of his arrest. Therefore, I find that it is not a fit case to grant pre-arrest bail to the petitioner who is not an accused in the above crime. However, if any crime is registered, the petitioner is at liberty to renew his request before appropriate Court.

With the above observation, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:04.04.2017

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