

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2288 OF 2018

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") by accused No.1, apprehending his arrest, in Crime No.40 of 2017 on the file of Tirupathi Urban Prohibition and Excise Police Station, Chittoor, registered for the offences punishable under Section 34 (a) of A.P.Excise Act, to direct the Station House Officer, Tirupathi Urban Prohibition and Excise Police Station to release him on bail in the event of his arrest in connection with the above crime.

The case of the prosecution, in brief, is that on 01.07.2017 at about 10.55 p.m. the Prohibition and Excise Inspector Tirupati Urban received a phone call from Assistant Prohibition Excise Superintendent Tirupati and on instructions to raid as per the complaint made to the Commissioner of Prohibition and Excise, A.P.Vijayawada. Then, the Prohibition and Excise Inspector secured mediators and proceeded to TNR Garden Restaurant with Display board with iron sheet shed with compound wall, electricity service No.5523102008401 situated on left side of Vaikuntapuram TPO, Thummalagunta Bus Road found door locked. Then the Prohibition and Excise Inspector enquired surrounding shop owners and residents, they disclosed that the TNR Garden restaurant is running by M/s Avilala Wines Shop Owner M.Kishore Kumar and land owner E.Saila Kumari, in the presence of mediators, Excise officials affixed the notice to the door. Then broke open the lock and entered into the room, found liquor boxes in entire room. Then the Prohibition and Excise Inspector, in the

presence of mediators with the help of staff verified the stock found (1) 33 cartoon boxes MC Dowelles No.1 Celebrations XXX Rum of 180 ml each, totally 1414 bottles (2) 01 cartoon box of MC Dowells No.1 Celebrations XXX Rum of 375 ml each totally 24 bottles (3) 04 carton box of MC Dowells No.1 Celebrations XXX Rum of 750 ms each totally 48 bottles (4) 1 carton box of honey bee genuine brandy of 1000 ml each, totally 8 bottles 5 & 6 carton boxes honey been genuine brandy of 375 ml each totally 144 bottles (5) 24 carton boxes of 999 power star fine whisky of 180 ml each, totally 1136 bottles (6) 06 carton boxes of Bacardi Black Original premium crafted rum of 180 ml each totally 258 bottles (7) 04 cartons boxes of Bacardi original premium crafted rum of 180 mls, (8) 1 carton box of mansion house gold whisky of 180 mls totally 30 bottles (totally 3243 bottles). The said stock was seized. Thus, the petitioner allegedly in possession of various items of wine and liquor, in total 3243 bottles, which is an offence punishable under Section 34 (a) of A.P.Excise Act.

Learned counsel for the petitioner contended that the petitioner was a license holder having obtained license for the period from 01.07.2015 to 30.06.2017 to sell liquor and it was expired on 30.06.2017, but the complaint was received on 02.07.2017 i.e. 2 days after expiry of license period.

When the license was expired, the petitioner is not supposed to sell the liquor in the name of M/s.Ahvavam Wines, which is exclusively belonged to his wife, therefore, the petitioner, prima facie, contravened the provisions of Section 34 (a) of A.P. Excise Act and it is an offence punishable under the same section. When there is prima facie material against the petitioner, this Court

cannot exercise power under Section 438 of Cr.P.C. to enlarge the petitioner on pre-arrest bail. In exceptional circumstances, after satisfying that there is no prima facie material against the petitioner, this Court can grant pre-arrest bail and it cannot be granted as a matter of routine.

Learned counsel for the petitioner contended that accused No.3 was enlarged on bail and she was running Aahwanam wines and she is no other than the wife of the petitioner.

Merely because accused No.3 was released on bail, the petitioner cannot be enlarged on pre-arrest bail being the owner of TNR Garden and the contraband was seized from the room of TNR Garden, which is being run by the petitioner himself. As the petitioner is not similarly placed with accused No.3, this Court cannot exercise such power under Section 438 of Cr.P.C. to grant pre-arrest bail. As I find no exceptional circumstances to conclude that the petitioner did commit no offence, I am not inclined to grant pre-arrest bail to the petitioner. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

19.03.2018
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