

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6802 OF 2018

ORDER:

This petition is filed under Section 438 Cr.P.C. by the petitioner/A2, in Crime No.85 of 2018, dated 03.04.2018 of Prohibition and Excise Station, Gadwal, registered for the offences punishable under sections 34(a)(f)(h) r/w 37 of the State Excise Act.

2. Heard the learned counsel for the petitioner and learned public prosecutor, representing the State and perused the material on record.

3. It is stated that A1 was arrested and found at the field and there is, according to the prosecution, alleged disclosure by A1 the contentions are that there is nothing to show any complicity of the petitioner, who is A2 – Yellappa, in relation to the crime, but for, from the so-called disclosure by A1 to the police about the *modus operandi* of adulteration of illicit liquor by using duplicate heal stickers and the same were also seized therefrom pursuant to the disclosure when inspected. Though it is the contention of the counsel for petitioner that the offence punishable up to three years and because of the Act, not specifically stated about bailable or nonbailable, from schedule II of Cr.P.C., unless it is above three years, it cannot be considered as nonbailable and the arrest of A1 without release by treating as if nonbailable

offence is an apprehension to maintain the application concerned. A perusal of Section 37 clearly speaks to the punishment provided is up to five years and not three years maximum. Thereby, even taken under schedule II of Cr.P.C., it is a nonbailable offence. Otherwise, the very bail application is not maintainable.

4. From perusal of the record and from the *modus operandi* in which the accused involved is not a case to accord the concession for anticipatory bail, however, these observations will not prejudice for surrender and moving for regular bail.

5. Accordingly, this criminal petition is dismissed. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

DR.B.SIVA SANKARA RAO, J

23.07.2018
SS