IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8788 of 2021

Arising Out of PS. Case No.-265 Year-2020 Thana- MADHUBANI TOWN District-Madhubani

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Amarish Kumar Singh, aged 40 years, Son of Sri Rais Pal Singh, resident of House No. 114, Lohia Bihar, Sector 9, P.S. Indira Nagar, District- Lucknow, General Works Manager of United Breweries Limited, located at Plot No. A-1, Industrial Area, Kopalan, Naubatpur, District- Patna.

... ... Petitioner

Versus

The State of Bihar

... ... Opposite Party

Appearance :
For the Petitioner : Mr. Satyabir Bharti, Advocate.
For the Opposite Party : Mr. Rajiv Nayan, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

5 20-09-2021 1) Learned counsel for the petitioner is directed to remove the defects, as pointed out by the office, within a period of four weeks from the date of restoration of normalcy.

2) The petitioner apprehends his arrest in connection with Madhubani Town P.S. Case No. 265 of 2020 registered under Sections 272/273/465/420 of the Indian Penal Code and Sections 30(a)/35(e) of the Bihar Prohibition and Excise Act, 2016.

3) The facts of the case, in brief is, that on 12.10.2020 some bottles of Kingfisher Ultra Non-Alcoholic drink, having batch number UB-12 dated 09.09.20, being sold in the market were seized by the police officials and the same was sent for

Chemical Examination to the Excise Chemical Examiner, Bihar at Patna along with Letter No. 1694/20 dated 12.10.2020, requesting therein to test the sample and send a report regarding the same. In pursuance to Letter No. 1694/20 dated 12.10.2020, a report dated 13.10.2020 was sent by the Excise Chemical Examiner, Bihar, reporting that after the sample was analysed, it was found that the sample is fermented liquor, having ethyl alcohol content of 0.8% v/v. Accordingly, the present case was registered on 14.10.2020 and the petitioner was made accused in his capacity as Manager of Manufacturing Unit-United Breweries Limited.

4) Learned Counsel for the petitioner Mr. Satyabir Bharti submitted that the petitioner has no criminal antecedent and there is no allegation of tampering with the evidence or the witnesses against the petitioner. The petitioner has been made accused in the present case due to mistake of fact. It is further submitted by him that no prima facie case under the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'Excise Act') is made out against the petitioner, as the ingredients of the offence under Section 30(a) of the Excise Act is not attracted in the present case. He has further submitted that the present case has been lodged on an incorrect presumption

that under the guise of selling non-alcoholic beverage the accused are involved in selling alcoholic product in Bihar. The argument of learned counsel for the petitioner is in two-folds. First, he contended that the report of the Excise Chemical Examiner, Bihar, which is the sole basis of this case is incorrect, doubtful and cannot be relied upon. In order to support his argument, he submits that it would be manifest from the F.I.R. that the sample of Kingfisher Ultra Non-Alcoholic Beverages sent for Chemical Examination had the batch number UB-12 dated 09.09.20. The product of the same batch was tested by the same Excise Chemical Examiner, and in his report dated 18.03.2021 contained in Annexure -12 to the Supplementary Affidavit, it is found that the ethyl alcohol content was 0.4% v/v. Thus, there is apparent contradiction in two reports prepared by the same Excise Chemical Examiner, of the samples having the same batch number. He submits that this casts doubt on the correctness and genuineness of the report of the Excise Chemical Examiner, as the samples belonging to the same batch number are finished product which are manufactured at one time and cannot give different results. Hence, the report of the Excise Chemical Examiner cannot be relied upon. He has also brought on record the reports of other Labs which tested samples of the same product, though belonging to different batch numbers, showing zero per cent alcohol in the drink. The same are Annexures-7 and 7/1 to the present bail application. Secondly, he argued that the product seized in this case is a non-alcoholic beverage and manufacturing and selling of such non-alcoholic beverages does come under the purview of the Excise Act. In support of his submission, learned counsel for the petitioner has drawn the attention of this Court to various definitions provided under the Excise Act. The relevant definitions are being reproduced herein-below:

Section 2(2) of the Excise Act defines the word “alcohol” as follows: -

> *"Alcohol" means Ethyl Alcohol having a colourless volatile flammable organic liquid which is produced by a natural or yeast fermentation of sugars and is intoxicating constituent of wine, beer, spirits, and other alcoholic beverages, and is also used as an industrial solvent and as fuel”.*

Section 2(3) of the Excise Act defines the word “alcoholic” as follows: -

> *"alcoholic" means a solution or mixture containing alcohol and*

being of any strength and purity."

Section 2(4) of the Excise defines the term "alcoholic beverage or potable liquor" as follows: -

"alcoholic beverage or potable liquor" means any beverage containing alcohol in conformity with the BIS standards which may be intoxicating and is fit for human consumption"

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Section 2(6) of the Excise Act defines the term "BIS standards" as follows: -

" BIS standards" means standard prescribed by Bureau of Indian Standards or the standards prescribed by any other Central Government authority, constituted under the relevant Act."

5) Learned Counsel for the petitioner submits that the Excise Act does not define the term *"Non-Alcoholic Beverages"*. He further submitted that the same has also not been defined in the General Clauses Act, 1897. In order to comprehend and understand the meaning of the term "*Non-Alcoholic Beverages"* learned counsel for the petitioner has taken aid of the definition provided in The Major Law Lexicon, Vol-4, 4th Edition 2010.

The relevant extract of the dictionary as contained in Annexure-11/1 to the supplementary affidavit is being reproduced herein-below: -

> "***Non-alcoholic beverages***. *For the purposes of heading 2202, the term "NON-ALCOHOLIC BEVERAGES" means beverages of an alcohol strength by volume not exceeding 0.5% vol. Alcoholic beverages are classified in heading 2203 to 2206 or heading 2208 as appropriate. [Customs Tariff Act (51 of 1975), I Sch. Import Tariff, S.IV, Chap.22, Note 3; Central Excise Tariff Act,1985 (5 of 1986), Sch I, Ch 22, N. 3 as substituted by Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), S.3]"*

6) Further, the learned counsel has also brought on record the specifications laid down by Bureau of Indian Standards (BIS) for manufacture of Carbonated Beverages -Non-Alcoholic Beer vide IS:12544:1988 wherein Non-Alcoholic Beer has been defined. The relevant extract as contained in Annexure-11 of the Supplementary Affidavit is reproduced herein-below: -

> "***3 TERMINOLOGY***
> ***3.1 Non-Alcoholic Beer***
> *It is a beverage containing less than 0.5 percent ethyl alcohol by volume."*

7) Lastly, the learned counsel for the petitioner argued that as Section 2(4) of the Excise Act defines "*alcoholic beverage or potable liquor*" to mean any beverage containing alcohol in conformity with BIS standards, therefore, BIS Standards have to be followed to determine as to whether a beverage is an "*alcoholic beverage or potable liquor*" or not. As per the report of the Excise Chemical Examiner, attached as Annexure-12 to the Supplementary Affidavit, the samples tested contained 0.4% v/v of ethyl alcohol. Therefore, according to the specifications laid down by the Bureau of Indian Standards the Kingfisher Ultra-Non-Alcoholic Beverage is a Non-Alcoholic beverage and manufacture and sale of the same will not attract the prohibition as contained under the Excise Act. There is no bar in manufacture or sale of a non-alcoholic beverage under the Excise Act. Hence, the petitioner has not committed any offence and no case is made out against the petitioner.

8) Learned A.P.P for the State has opposed the prayer of grant of anticipatory bail to the petitioner but there is no explanation regarding the contradictory reports of Chemical

Examination indicated above. He submitted that the petitioner is named in the F.I.R. and there is prima facie case established against the petitioner.

9) Considering the entire gamut of facts, materials placed on record especially the two contradictory reports regarding contents of ethyl alcohol being found in the Chemical Examination of the material seized and the arguments advanced by learned counsel for the parties, I am inclined to grant the privilege of anticipatory bail to the petitioner. The petitioner, above-named, in the event of his arrest/surrender before the learned court below within a period of twelve weeks from today, be released on anticipatory bail on his personal bond to the satisfaction of learned ADJ-II-cum-Special Judge, Excise Act, Madhubani, in connection with GR Excise-1371/2020/Town P.S. Case No. 265 of 2020, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

10) Once normalcy is restored, the petitioner shall furnish bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each within a period of eight weeks to the satisfaction of the court concerned in connection with the aforesaid case.

11) It is needless to say that, this Court has considered the

materials, only for the purposes of grant of anticipatory bail to the petitioner. Hence, the observations and consideration of this order shall have no bearing on the trial of this case. During trial, the learned court below shall not be prejudiced by this order.

12) With the aforesaid observation, this application stands allowed.

(Sudhir Singh, J)

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