

HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.251 of 2023

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COMMON ORDER:

1. Criminal Petition No.251 of 2023 is filed on behalf of Accused No.8 and Criminal Petition No.252 of 2023 is filed on behalf of Accused No.10 in Crime No.189 of 2022 of Prohibition and Excise Station, Ibrahimpatnam, for grant of pre-arrest bail invoking Section 438 Cr.P.C.
2. Heard Sri V.R.Machavaram, learned counsel for the petitioners as well as the learned Additional Public Prosecutor who is representing the respondent-State.
3. Making his submission, learned counsel for the petitioners contends that a case was registered against the petitioners that they committed offence punishable under Section 34(a) of Excise Act and the punishment prescribed under the said provision is upto three years and therefore, the prosecuting agency is under obligation to issue notice under Section 41-A Cr.P.C. Without issuing any such notice, the prosecuting agency is trying to apprehend the

petitioner and therefore, they are before this Court seeking for pre-arrest bail.

4. Opposing the said submission, learned Additional Public Prosecutor contends that more than 20,000 litres of ID liquor was seized and on investigation, it was found that the petitioners are involved in manufacture of Illicit Distilled liquor at Odisha State and therefore, the section of law was altered from Section 34(a) of the Excise Act to Section 37A of the Excise Act and the punishment prescribed under the altered section is upto 10 years and therefore, there is no requirement of issuance of any notice under Section 41-A Cr.P.C.

5. In reply to the said submission, learned counsel for the petitioners states that after such alteration memo is filed, notice under Section 41-A was served upon Accused No.4. However, the same analogy is not applied so far as the petitioners are concerned. Learned counsel submits that except the alleged confessional statement of co accused who stated that the petitioners are involved in manufacturing of Illicit Distilled liquor, no other material is collected by the investigating agency to show such an

involvement of the petitioners and thus, even on that ground, the petitioners are entitled for the relief sought for.

6. Learned Additional Public Prosecutor states that the case is under investigation. However, learned Additional Public Prosecutor failed to deny the fact that except the alleged confessional statement, till now, there is no material that is collected by the investigating agency to show the involvement of the petitioners. But that does not mean that the prosecuting agency will not succeed in collecting such material.

7. Taking into consideration these factors, this Court is of the view that the request of the petitioners can be honoured, however, conditionally.

5. In the result, the Criminal Petition is allowed with the following conditions:

- (i) The petitioners/Accused Nos.8 & 10 are directed to surrender before the concerned Court within ten (10) days. On such surrender, they shall be enlarged on bail on their executing a personal bond for Rs.75,000/- (Rupees Seventy Five Thousand only) each with two sureties for like-sum each to the satisfaction of the Court

concerned. The sureties are directed to submit their two latest passport size photographs at the time of furnishing solvency. One such photograph is ordered to be pasted in the Surety Register against the name of the surety. The other photograph shall be kept in the case record concerned.

- (ii) The petitioners/Accused Nos.8 & 10 shall report before the Station House Officer, Prohibition and Excise Station, Ibrahimpatnam, on every Monday between 10.30 a.m. and 12:00 p.m. till filing of final report.
- (iii) The petitioners/Accused Nos.8 & 10 should not involve in any unlawful activity.
- (iv) The petitioners/Accused Nos.8 & 10 should afford all assistance for the proper investigation of the case.
- (v) The petitioners/Accused Nos.8 & 10 should not cause the evidence of the offence disappear.
- (vi) The petitioners/Accused Nos.8 & 10 should not tamper with the evidence in any manner.
- (vii) The petitioners/Accused Nos.8 & 10 should not by way of inducement, threat or promise, dissuade any person who is acquainted with the facts of the case, from disclosing such facts to the Court or to the Police Officer.
- (viii) In case the petitioners/Accused Nos.8 & 10 hold a passport, they shall surrender the same.

- (ix) The petitioners/Accused Nos.8 & 10 should ensure their presence whenever required by the Court or Police.
- (x) The petitioners/Accused Nos.8 & 10 shall not leave India without previous permission of the Court concerned.
- (xi) The petitioners/Accused Nos.8 & 10 shall file affidavits before the Court concerned disclosing the following particulars:-
 - (1) Contact number
 - (2) Mail address
 - (3) Residential particulars.

In case, there is any change of the aforementioned details, the petitioners shall intimate the court concerned by giving fresh affidavits duly mentioning the change. They shall continue to do so till filing of the final report.

Any deviation of the above conditions would entitle the respondent to take appropriate steps for cancellation of the pre-arrest bail granted.

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Date: 03.02.2023
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