

(2012) 08 KAR CK 0372
In the Karnataka High Court
Case No : Criminal Petition No. 15740 of 2012

Kamalesh Kumar Idnani

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Karnataka Excise Act, 1965 — Section 32, 34

Citation : (2012) 08 KAR CK 0372

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Veeresh B. Patil, for the Appellant; Anuradha Desai, Addl. SPP, for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar

1. Petitioner who has been arraigned as accused No. 2 in Crime No. 91/2012 registered by Yadgir Town Police Station for the offences punishable under Sections 32 and 34 of Karnataka. Excise Act 1965 is seeking for being enlarged on bail in the event of his arrest. Heard; Sri. Veeresh B. Patil, Learned Counsel appearing for petitioner and learned Additional State Public Prosecutor appearing for respondent - State. Perused the records.

2. Case of the prosecution is that on 14.06.2012 at about 10.30 a.m. when PSI, Yadgir Town Police Station was patrolling near City Municipality, he saw a person coming on motor cycle with a box/bag at the back side of the vehicle and on suspicion, said vehicle was stopped and checked and it was found that said person was carrying liquor bottles to Hattikuni village and on being questioned, he informed that owner of Sindhu Bar (petitioner herein) had instructed him to do so and since he was working as waiter in the said bar, he had carried out the instructions given by the owner. Liquor bottles were seized under mahazar and a case was registered under Sections 32 and 34 of Karnataka Excise Act, 1965.

Defence of petitioner is of total denial.

3 It is the contention of Mr. Patil that accused No. 1 who was carrying the bottles has already been enlarged on bail by the jurisdictional Court and there are no incriminating materials to pin point the guilt of petitioner herein and as such he seeks for petitioner being enlarged on bail, in the event of his arrest since he has been arraigned as accused No. 2.

4. Per contra, learned Additional State Public Prosecutor prays for rejection of the petition contending that investigation is being continued and charge sheet is yet to be filed and in the event of petitioner being enlarged on bail, he is likely to abscond and may tamper with the prosecution witnesses.

5. Having heard the learned advocates appearing for the parties and on perusal of records, it would clearly go to show that none of the liquor bottles were seized from the custody of petitioner herein. It is only based on a voluntary statement made by accused No. 1 before PSI, petitioner has been arraigned as accused No. 2. As to whether petitioner had instructed accused No. 1 to carry these bottles to Hattikuni, as to the ownership of these seized liquor bottles can be traced to the petitioner, is a question which requires to be proved during the course of trial by the prosecution before jurisdictional Magistrate and as such, I am of the considered view that petitioner is entitled for the relief sought for. It is also to be noticed that offence alleged against the petitioner is neither punishable with death or life imprisonment. Admittedly, he is a permanent resident of Yadgir and chance of absconding is too remote. Hence, the following:

ORDER

Criminal petition is allowed. Petitioner shall surrender before Yadgir Town Police Station within two weeks from today. On his surrender, petitioner shall be released on bail subject to the following conditions:

- i. Petitioner shall execute a personal bond for a sum of Rs. 25,000/- (Rupees Twenty Five Thousand Only) with two sureties for the like sum.
- ii. He shall not tamper or terrorize on prosecution witnesses.
- iii. He shall not leave the jurisdiction of the Court without express permission.
- iv. He shall appear before Yadgir Town Police station once in fifteen days to mark his attendance till the filing of charge sheet.