

(2014) 03 KAR CK 0027
In the Karnataka High Court
Case No : Criminal Petition No. 1115 of 2014

Mr. Dhruva Kumar

APPELLANT

Vs

Office of The Joint Commissioner of Excise SEIB, Bangalore

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Karnataka Excise Act, 1965 — Section 32 38A 43A

Citation : (2014) 03 KAR CK 0027

Hon'ble Judges : Budihal R.B., J

Bench : Single Bench

Advocate : Eugene Prabhu, for M/s. Barrot and Barrot, for the Appellant; K. Nageshwarappa, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Budihal R.B., J.—This is the petition filed by the petitioner-accused No. 3 u/s 438 of the CR.P.C. seeking anticipatory bail and to direct the respondent-police to release the petitioner on bail in the event of arrest of the petitioners for the offences punishable u/s 32, 38A, 43A of Karnataka Excise Act 1965. The brief facts of the prosecution case is that on 28.01.2014 at about 2.05 p.m. as per the order Joint Commissioner of Excise SEIB at Bangalore at M.G. Road trinity Circle, Old Madras Road in front of MG Mahal as person was carrying Foreign Liquor of 15 liters in Yamaha bearing R-15 KA-02-HV-2291 and one more vehicle KA-05-K-6381 Bajaj Discover 150 disk brake 1000 ml 6 bottle and 6 liters Foreign liquors is carrying to sell illegally.

2. Heard the learned counsel appearing for the petitioner and also the learned HCGP for the respondent State.

3. Learned counsel appearing for the petitioner during the course of his arguments submitted that the present petitioner is totally unconnected with the alleged offence. The present petitioner was not at all carrying any such Foreign Liquor, nor such Foreign Liquor was seized from the possession of the present

petitioner by the respondent police. He made submission that only on the basis of the Voluntary statement of accused Nos. 1 the respondent police have involved the present petitioner in the present case. He made submission that the statement made by the accused No. 1 is not binding on the present petitioner. It is also his contention that the offence alleged are not exclusively punishable with death or imprisonment of life, and they are triable by the Court of Magistrate and the petitioner is ready to abide to any conditions imposed by the Court. Hence the petition may be allowed and the petitioner may be granted with bail.

4. As against this, the learned High Court Government Pleader during the course of his arguments submitted that materials itself goes to show the involvement of present petitioner and for commission of alleged offence. He made the submission that as per accused Nos. 1 statement it is very clear about the involvement of the present petitioner in the alleged offence of possession and sale of Foreign Liquor. Hence he submits that the matter is still under investigation and the present petitioner is absconding and Investigating Officer has to interrogate the present petitioner. Therefore, he is not entitled for grant of Anticipatory bail. Perused the averments made in the bail petition, FIR, complaint and also perused the other materials placed along with the petition. Looking to the materials produced, it goes to show that the accused Nos. 1 and 2 have made the voluntary statements. It is contention of the petitioner herein that it is only on the basis of voluntary statement of accused Nos. 1 petitioner is implicated in the case and the materials also said to have been seized from the possession of accused Nos. 1 and 2. The offence alleged are not exclusively punishable with death or imprisonment of life, and they are triable by the Court of Magistrate. The apprehension of the prosecution is that the present petitioner is not available to Investigating Officer for interrogation. If in case bail is granted, he may abscond and it is very difficult for the Investigating Officer to secure the presence and proceed with further investigation. For this contention of learned High Court Government Pleader, to secure the presence of the petitioner before the Investigating Officer conditions can be imposed to safeguard the interest of the prosecution. The offences are triable by the Court of Magistrate and not exclusively punishable with death or imprisonment of life. A1 and A2 are granted with bail. Therefore looking all these aspects of the case, I am of the opinion that it is a fit case to excise the discretion in favour of the present petitioner.

Accordingly, petition is allowed. The respondent-police are directed to release the petitioner on bail in the event of his arrest for the offence punishable u/s 32, 38A, 43A of Karnataka Excise Act 1965 registered by the respondent-police in Crime No. 44/2014,, subject to the following conditions:

(i) The petitioner-accused No. 3 shall execute a personal bond for a sum of Rs. 50,000/- (Rupees Fifty Thousand only) with one solvent surety for the likesum to the satisfaction of the concerned Arresting Authority.;

(ii) The petitioner-accused No. 3 shall not directly or indirectly tamper with any

of the prosecution witnesses;

(iii) The petitioner-accused No. 3 shall make himself available to the Investigating Officer for interrogation whenever called for.

(iv) The petitioner-accused No. 3 shall mark his attendance before the respondent police Station once in fortnight preferably on Sunday between 10 am and 12. p.m. till the completion of investigation.

(v) He shall appear before the concerned Magistrate Court within thirty days from the date of this order and execute the personal bond and also the surety bond.