

**IN THE COURT OF THE XXVIII ADDL. CITY CIVIL &
SESSIONS JUDGE, Mayo Hall, Bangalore, [CCH.NO.29]**

Present :- Sri. K.M. Rajashekar, B.Sc., L.L.M.,

Dated this the 12th day of August 2021

Crl.Misc.No.25884/2021

Petitioner: Y.S. Bharath Reddy,
S/o Y.S.G. Hanumanth Reddy,
A/a 35 years,
R/at No.1-100, Gunipalli,
Bukkapatnam, Gasikavaripalli,
Ananthpuram, Andra Pradesh.

(By pleader : Sri. V. Naveen Kumar)

V/s

Respondent: State by Excise Police,
Enforcement and Investigation
Wing, Ulsoor Range,
Bangalore South Division,
Bangalore.

(By Public Prosecutor)

ORDERS

The Petitioner/Accused has approached this Court under Section 438 of Cr.P.C. for grant of anticipatory bail in the event of his arrest in Crime No.5/2021-22/771E2/774207 of Excise Police, for the offences punishable under Section 11, 12, 14, 32, 38(A), 43 of Karnataka Excise Act, 1965.

2. The allegations are that, based on credible information on 20.7.2021 at about 5.00 p.m., the Complainant and his staff able to seize Hyundai I-10 Vehicle bearing No.AP-02-BE-3913 with a box containing 30 liters of Old Admiral Whisky OSOP Branch 30 pet bottles of 1000 ml., without any valid license. However the driver managed to escape from the spot. Hence, Respondent Police filed F.I.R for the offences punishable under Section 11, 12, 14, 32, 38(A) and 43 of K.E. Act.

3. The Petitioner/Accused claimed that, he is innocent of the charges leveled against him and he has not committed any offences. He has been falsely implicated in this case. The Petitioner and his family members will be put to hardship in case of his arrest and detention by the Respondent Police. He is ready to abide by the conditions imposed by the Court. Hence, sought for bail.

4. The learned Public Prosecutor filed objection and has seriously opposed the bail application on the ground that, the petition is not maintainable either in law or on facts. There are sufficient materials available on record to hold prima-facie case

against the accused person in respect of the alleged offences. If the Petitioner/Accused is enlarged on bail, there are every possibility of his absconding, and chances of repetition of similar offences, tampering the prosecution witnesses and he may not be available for the investigation and trial, that may be hamper the investigation as well as trial of this case. Hence, sought for dismissal of the bail application.

5. Heard the arguments of both sides and perused the records.

6. Following point arise for my consideration:

Whether the Petitioner has made out sufficient grounds for granting anticipatory bail U/S 438 of Cr.P.C.?

7. My finding on the above point is in the Affirmative, for the following:

REASONS

8. Upon going through the materials available on record, it is seen that, the allegations of complaint as well as F.I.R. that, on 29.7.2021 at about 5.00 p.m., the accused person was carrying liquor in his Hyundai I-10 Vehicle bearing No.AP-02-BE-3913 there only. It is to be noted that, all the offences are triable

by Magistrate. It is admitted fact that the Petitioner/Accused person is not the manufacturer of the liquor. It is seen that the recovery is already made. The alleged offenses are punishable with neither death nor imprisonment for life. The permanent address of Petitioner is not disputed. The Petitioner and his family members will be put to hardship in case of his arrest and detention by the respondent-Police.

It is pertinent to note that, their Lordships of Hon'ble Supreme Court in the decision reported in **2014(3) KCCR 1977 (SC) between Arnesh Kumar Vs., State of Bihar and another** was pleased to hold as under:

“Arrest brings humiliation, curtails freedom and cast scars forever. Law-makers know it so also the police. There is a battle between the lawmakers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

9. The said proposition of law is squarely applicable to the case on hand. However, the apprehension of the prosecution regarding the non-availability for trial, tampering witnesses etc.,

could be easily met with by imposing appropriate stringent conditions. Hence considering the fact that the petitioner has deep roots in the society and his address is not in dispute. Hence, the petitioner-accused is entitle for anticipatory bail. Accordingly, above Point is answered in Affirmative.

10. In the result, I proceed to pass the following:

ORDER

The petition filed U/S 438 of Cr.P.C., by the Petitioner/Accused Y.S. Bharath Reddy S/o Y.S.G. Hanumanth Reddy is allowed.

In the event of his arrest, the Petitioner/Accused shall be enlarged on bail in Crime No. 5/2021-22/771E2/774207 of Respondent Police Station, on execution of personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand) along with a surety for the like sum, subject to following conditions:

- (i) The Petitioner/Accused shall not tamper with the prosecution evidence or witnesses in any manner and he shall co-operate with the investigation.
- (ii) He shall not commit similar offences in future.
- (iii) The petitioner shall surrender before the Court

within 15 days from the date of this order.

- (iv) The Petitioner shall mark his attendance before the I.O. once in a week preferably on every Monday between 10-00 a.m. to 11-00 a.m.

(Dictated to the Stenographer directly on computer, typed & computerized by her, corrected and signed by me and then pronounced in the open Court on this the **12th** day of **August 2021**).

[K.M. Rajashekhar],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.

Order pronounced in the open court (vide separate order)

O R D E R

The petition filed U/S 438 of Cr.P.C., by the Petitioner/Accused Y.S. Bharath Reddy S/o Y.S.G. Hanumanth Reddy is allowed.

In the event of his arrest, the Petitioner/Accused shall be enlarged on bail in Crime No. 5/2021-22/771E2/774207 of Respondent Police Station, on execution of personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand) along with a surety for the like sum, subject to following conditions:

- (i) The Petitioner/Accused shall not tamper with the prosecution evidence or witnesses in any manner and he shall co-operate with the investigation.
- (ii) He shall not commit similar offences in future.
- (iii) The petitioner shall surrender before the Court within 15 days from the date of this order.

- (iv) The Petitioner shall mark his attendance before the I.O.
once in a week preferably on every Monday between
10-00 a.m. to 11-00 a.m.

[K.M. Rajashekhar],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.