

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Application No.S-895 of 2024

Applicant : Shafqatullah son of Azizullah, through
Mr. Suleman Survery, Advocate.

Respondent : The State, through Mr. Irfan Ali Talpur,
A.P.G., along with Mujeeb Rehman, Inspector
Excise Crime Branch Hyderabad

Date of hearing : **09.09.2024**
Date of Order : **09.09.2024**

O R D E R

ZAFAR AHMED RAJPUT, J; Having been rejected his earlier application for grant of pre-arrest bail being Criminal Bail Application No.1863 of 2024 by the IXth Additional Sessions Judge, Hyderabad vide order dated 08.08.2024, applicant, Shafqatullah seeks the same relief from this Court in Crime No.13 of 2024, registered at P.S Excise & Narcotics Crime Branch, Hyderabad (**P.S Excise**) under Articles 3/4 of the Prohibition (Enforcement of Hadd) Order, 1979 (**PEHO**). He was admitted to interim pre-arrest bail by this Court vide order dated 12.08.2024, now the matter is fixed for confirmation of the same or otherwise.

2. It is alleged that, on 05.05.2024 at 11:15 a.m., Inspector Mujeeb Rehman of Excise Crime Branch, Hyderabad, during course of patrolling along with sub-ordinate staff, arrested the applicant on being found in possession of 20 grams ICE and 2514 tin of bear lying in the vehicle i.e. hi-ace Van No.LET-19-136 at Al-Falah Petrol Pump near Nasimnagar, Hyderabad for that an F.I.R. being Crime No. 11 of 2024 was registered at P.S. Excise under Articles 3/4, PEHO and section 9(a)(1) of the Control of Narcotic Substances Act, 1997 as amended by the Control of Narcotic Substances (Amendment) Act, 2022 (**“the Act of 1997”**).

3. After hearing the learned counsel for the applicant as well as learned A.P.G for the State and perusing the material available on record, it appears that, vide order dated 13.05.2024, the applicant was admitted to post arrest bail in crime No.11 of 2024 under Section 9(a)(1) of the Act of 1997 by the Court of Judicial Magistrate-X, Hyderabad. It further appears that after usual investigation, Excise Police presented the challan for opinion to District Public Prosecutor (**DPG**) in Crime No. 11 of 2024 for both offences i.e. under Articles 3/4, PEHO and under section 9(a)(1) of the Act of 1997 and on the advice of DPG, the Excise Police lodged the present F.I.R. separately for the alleged offence under PEHO. Since the applicant was already admitted to post arrest bail by the Judicial Magistrate-X, Hyderabad in the offence under section 9(a)(1) of the Act of 2022, he then preferred the pre-application for the grant of pre-arrest bail in the case punishable under Articles 3/4, PEHO.

4. As per record, the alleged recovery has been affected in a day light time near to a petrol pump which is located in thickly populated area but Excise police failed to associate any private person to witness the alleged recovery in compliance of section 103, Cr. P.C. It may be observed that the offence of manufacturing, etc. of intoxicants, under Article 4(1), PEHO is punishable with imprisonment up to five years and the offence of importing, exporting, transporting, etc. of intoxicants, under Article 4(2), PEHO is punishable with imprisonment for life or with imprisonment which is not less than two years. It is now well settled law that for the purpose of bail, the lesser punishment provided in the Statute shall be considered. The offence of possessing intoxicant, under Article 3, PEHO is punishable with imprisonment up to two years. As such the same isailable. It is yet to be determined after recording evidence by the trial Court as to which of the said two Articles of PEHO attracts to the facts of the case.

5. Consequently, the interim pre-arrest bail granted to the applicant/accused by this Court vide order dated 12.08.2024 is hereby confirmed on the same terms and conditions.

6. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law

Cr. Bail Application stands disposed of.

JUDGE

Ahmed/Pa,