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**E. Mallaiah Vs. the State of A.P., (Through Proh. and Excise Inspector, Sho),  
Rep. by Public Prosecutor, High Court of A.P.**

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Rep. by Public Prosecutor, High Court of A.P.**

**SooperKanoon Citation : [sooperkanoon.com/425783](http://sooperkanoon.com/425783)**

**Court : Andhra Pradesh**

**Decided On : Feb-04-2003**

**Reported in : 2003(1)ALD(Cri)726; 2003(2)ALT(Cri)366**

**Judge : K.C. Bhanu, J.**

**Acts : Andhra Pradesh Excise (Arrack and Toddy Licence General Conditions )  
Rules 1969 - Rules 24 and 34; Andhra Pradesh Excise Act, 1968 - Sections 36  
and 81(1); Code of Criminal Procedure (CrPC) - Sections 438**

**Appeal No. : Criminal Petition No. 419 of 2003**

**Appellant : E. Mallaiah**

**Respondent : The State of A.P., (Through Proh. and Excise Inspector, Sho), Rep.  
by Public Prosecutor, High Cour**

**Advocate for Def. : Public Prosecutor**

**Advocate for Pet/Ap. : T. Amarnath Goud, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

**ORDER**

**K.C. Bhanu, J.**

1. It is the case of the prosecution that the Excise Police visited the licensed toddy shop of the petitioner. They suspected adulteration of toddy and therefore, they drew some samples and sent them to the concerned authority for analysis. The analyst after analysis gave opinion that the toddy sample contained Diazepam and therefore it was adulterated. The violations against the present petitioner are under Rules 24 and 34 of the A.P. Excise (Arrack and Toddy Licence General Conditions ) Rules 1969, and under Section 36 read with Section 81(1)(b) of the A.P. Excise Act, 1968.

2. Rule 24 of the above said Rules deals with drawal of samples while Rule 34 deals with the power of Excise Officials to enter and inspect any shop and test arrack or toddy therein. There is no Section 81(1)(b) of the A.P. Excise Act. The Act contains only 73 Sections in all.

3. Section 36 of the Excise Act deals with penalty for misconduct of licensees etc. The charge levelled against the petitioner is under Section 36 of the A.P. Excise Act whereunder the maximum imprisonment does not exceed two years.

4. Learned counsel for the petitioner contended that as there is no classification of offences under the A.P. Excise Act as to whether they are bailable or non-bailable, one has to look into the schedule of the Code of Criminal Procedure. The learned Public Prosecutor did not deny or dispute the same.

5. As rightly contended by the learned counsel for the petitioner, in the absence of classification of the offences under the A.P. Excise Act, viz., whether they are bailable or non-bailable, regard should be had to Schedule II of the Code of Criminal Procedure, which provides for classification of offences against Laws other than the Indian Penal Code, in order to ascertain whether a particular offence under the A.P. Excise Act is bailable or non-bailable. As per that Schedule, if an offence is punishable with imprisonment for less than three years, the offence is bailable. As I have already observed above, the charge levelled against the petitioner is under Section 36 of the A.P. Excise Act and since the maximum imprisonment provided thereunder is less than two years, the offence is

bailable. Therefore, Section 438 Cr.P.C. has no application to the facts of the case, and hence the present petition for anticipatory bail is not maintainable, inasmuch as the offence alleged against the petitioner is bailable.

6. In the result, the petition is dismissed.

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