

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Criminal Case No.2171 of 2016

1. Kaushal Sarthi, S/o Shri Shobhraj Sarthi, aged about 29 years, Occupation Labour, R/o Village Bore, Police Station Sariya, Tahsil Baramkela, District Raigarh (C.G.)
2. Bhagatram Sarthi, S/o Late Shri Bhogilal Sarthi, aged about 23 years, Occupation Labour, R/o Village Bore, Police Station Sariya, Tahsil Baramkela, District Raigarh (C.G.)

---- Applicants

Versus

The State of Chhattisgarh, through the officer in charge of Police Station Sariya, District Raigarh (C.G.)

---- Non-applicant

For Applicants:	Mr. Roop Naik, Advocate.
For Non-applicant:	Mr. D.R. Minj, Deputy Govt. Advocate, on advance copy.

Hon'ble Shri Justice Sanjay K. AgrawalOrder On Board06/04/2016

1. Heard on the question of admission.
2. Admit.
3. Issue notice.
4. Mr. D.R. Minj, learned Deputy Govt. Advocate, accepts notice on behalf of the State.
5. Learned counsel for the applicants would submit that father of applicant No.2 died on 2-4-2016, therefore, the bail application be taken up for hearing.
6. State counsel informed that the case diary is available.
7. Since father of applicant No.2 died, the bail application is taken up for hearing.

8. The accused/applicants have moved this bail application under Section 439 of the Code of Criminal Procedure, 1973 for releasing them on regular bail during trial in connection with Crime No.42/2016, registered at Police Station Sariya, Distt. Raigarh, for the offence punishable under Sections 34(2) and 59-A of the Chhattisgarh Excise Act, 1915.
9. Case of the prosecution, in brief, is that 18 bulk liters of illicit liquor was seized by the police from the present applicants.
10. Learned counsel for the applicants further submits that the applicants have not committed any offence, they have falsely been implicated in the case, they are in custody since 22-3-2016 and therefore, they may be released on bail.
11. On the other hand, learned State counsel opposes the bail application.
12. I have heard learned counsel appearing for the parties and perused the case diary.
13. Taking into consideration the condition incorporated in Section 59-A(ii) of the Chhattisgarh Excise Act, 1915, and bearing in mind the principles of law laid down in **Banti Singh v. State of Chhattisgarh** (M.Cr.C.No.6846 of 2014, decided on 05.01.2015), if the facts of the present case are examined, it is apparent that only 18 bulk liters of illicit liquor has been seized from the applicants which is more than the prescribed limit of 5 bulk liters, but looking to the fact that it is the first offence of the applicants and they are in custody since 22-3-2016, the case is triable by the Judicial Magistrate First Class, trial is likely to take some more time and further taking into account the nature and gravity of offence and the plea raised by the applicants that they have falsely been implicated in the case, I am of the opinion that present is a fit case in which the applicants should be enlarged on regular bail.

14. Accordingly, the bail application filed under Section 439 of the CrPC is allowed. It is directed that on furnishing a personal bond in the sum of Rs.25,000/- each with one surety in the like sum to the satisfaction of the concerned Court for their appearance as and when directed, the applicants shall be released on bail, subject to following conditions:

1. That, the applicants shall furnish a specific undertaking that while on bail, they will not commit any excise offence, otherwise bail granted to them shall be liable to be cancelled and shall co-operate the prosecution during trial.
2. That, the accused/applicants shall make themselves available for interrogation before the concerned Investigating Officer as and when required and the accused/applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer.
3. That, the accused/applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial.

Sd/-
(Sanjay K. Agrawal)
Judge