

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 464 of 2016**

Bhanushankar Khute, S/o Late Hiralal Khute; aged about – 45 years; R/o- Ravidas Ward, Bhatapara (Town); District (Revenue & Civil)- Balodabazar (C.G.)

---- Applicant**Versus**

State Of Chhattisgarh: Through: Police Station-Bhatapara (Town); District (Revenue & Civil)- Balodabazar-Bhatapara (C.G.)

-----Non-applicant

For Applicant: Mr. Sumit Jhanwar, Advocate.
For Non-applicant/State: Mrs. Astha Shukla, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****17/02/2016**

(1) The accused/applicant has moved this bail application under Section 439 of the Code of Criminal Procedure for releasing him on regular bail during trial in connection with Crime No.04/2016 registered at Police Station Bhatapara (Town); District (Revenue & Civil)- Balodabazar-Bhatapara (C.G.) for the offence punishable under Section 34(2) of the Chhattisgarh Excise Act, 1915.

(2) Case of the prosecution, in brief, is that 12 bulk liters of illicit liquor was seized by the police from the present applicant.

(3) Learned counsel for the applicant submits that in Criminal Case No.1533/2014 registered against the applicant, he has been acquitted by the jurisdictional criminal court on 23.03.2015

whereas in Criminal Case No. 596/13, fine has been imposed against the applicant by the trial Court vide order dated 23.11.2013 and, thus, it is a first offence registered against the applicant. He further submits that applicant has falsely been implicated in the case, and therefore, the applicant may be released on bail.

(4) On the other hand, learned counsel for the State opposes the bail application.

(5) I have heard the counsel appearing for the parties and perused the case diary.

(6) Taking into consideration the condition incorporated in Section 59-A(ii) of the C.G. 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 present case are examined, it is apparent that only 12 bulk liters of liquor has been seized from him which is more than prescribed limit of 5 bulk liters, but looking to the fact that it is first offence of the applicant, which is apparent from the orders dated 23.03.2015 passed by the jurisdictional criminal court in Criminal Case No.1533/2014, by which applicant has been acquitted of the offence whereas in another Criminal Case No. 596/13, fine has been imposed upon him by the trial Court vide order dated 23.11.2013 and he is in custody from 03.01.2016 and case is triable by the Judicial Magistrate First Class and trial is likely to take some more time and further taking into account the nature and gravity of offence and plea raised by

the applicant that he has falsely been implicated in case, I am of the opinion that present is the fit case, in which, the applicant should be enlarged on regular bail.

(7) Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed. It is directed that on furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Court for his appearance as and when directed, the applicant shall be released on bail, subject to following conditions:

- That, the applicant shall furnish a specific undertaking that while on bail, he will not commit any excise offence, otherwise bail granted to him shall be liable to be cancelled and shall co-operate the prosecution during trial.
- That, the accused/applicant shall make himself available for interrogation before the concerned Investigating Officer as and when required and the accused/applicant 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.
- That, the accused/applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial.

Certified copy, as per rules.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

