

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.4789 of 2016**

Tosh Kumar Bahel, S/o Shri Syamratan Baghel, aged about 35 years, R/o Village Raveli, Chauki Chandnu, Thana Nandghat, Revenue/Civil District Bemetara (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Chauki Chandnu, Thana Nandghat, Revenue/Civil District Bemetara (CG).

---- Non-applicant

For Applicant : Shri Samir Singh, Advocate
For Non-applicant : Shri Om Prakash Sahu, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****03/08/2016****(1)** Heard.

(2) This is second bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant who has been arrested on 10.03.2016 in connection with Crime No.83/2016, registered at Police Station Chauki Chandnu, Thana Nandghat, District Bemetara, for the offence punishable under Section 34(2) of the Chhattisgarh Excise Act.

(3) Case of the prosecution, in brief, is that 12.240 bulk liters of illicit liquor was seized by the police from the present applicant.

(4) The first bail application of the applicant was dismissed as

withdrawn with liberty to file the same after disposal of criminal case relating to the excise offence by order of this Court dated 21.04.2016 passed in M.Cr.C.No.1928 of 2016.

(5) Learned counsel appearing for the applicant submits that Criminal Case No.345/2015 has already been decided by JMFC, Bemetara vide order dated 25.07.2016 and he has been acquitted from the said offence and therefore, the applicant may be released on bail.

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

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

(8) 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 12.240 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 the applicant is in custody from 10.03.2016 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.

(9) 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:

1. 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.
2. 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.
3. 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

L/-