

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M. P. No. 983 of 2015**

Rakesh Kumar Yadav S/o Deendayal, aged about 27 years, Caste Ahir, R/o Forest Naka, Village Kachod, Tahsil Kelhari, Distt. Koriya, Chhattisgarh.

---- **Petitioner****Versus**

State of Chhattisgarh through District Magistrate, Distt. Koriya
Baikunthpur, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri Parag Kotecha , Advocate
For Respondent/State	:	Shri Ashok Swarnkar, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05/01/2017**

The present petition has been filed assailing the order dated 26.10.2015 passed by the first Additional Sessions Judge, Manendragarh, District Koriya in Criminal Revision No. 16/15 whereby the Revisional Court has set aside the order of the JMFC, Manendragarh granting bail to the petitioner under Section 34 (2) of Excise Act on 11.11.2014.

2. Brief facts of the case are that on 28.10.2014 the petitioner was found to be in illegal possession of 6.78 litres English liquor. Accordingly, a case was registered against the petitioner for the offence under Section 34 (2) of the Excise Act. The petitioner moved an application for grant of regular bail before the JMFC, Manendragarh. The trial Court on 11.11.2014 after hearing the counsel for the petitioner as well as the public prosecutor passed an order granting bail to the petitioner. Subsequently, after about four months time, the revision petition was preferred by the State before the first Additional Sessions Judge, Manendragarh where the case was registered as Criminal Revision No. 16 of 2015. The Revisional

Court vide its impugned order dated 26.10.2015 allowed the revision petition holding that the order passed by the trial Court allowing the bail application is without following the provisions under Section 59 A of the Excise Act. According to the Revisional Court, the trial Court ought to have granted an opportunity to the State to oppose the bail application before the trial Court and thus, quashed the order dated 11.11.2014 granting bail to the petitioner.

3. It is this order which is under challenge in this petition.

4. The present petition was filed on 30th October, 2015 and this Court at the time of admission of the petition i.e. on 04.11.2015 had granted an interim protection and stayed the effect and operation of the order of the Revisional Court dated 26.10.2015.

5. Counsel for the petitioner submits that by virtue of the said interim protection the petitioner is still enjoying the benefit of bail. He further submits that during this period, the trial itself has proceeded and reached the stage of evidence and it almost has reached at the fag end stage. Counsel for the petitioner submits that in the peculiar facts and circumstances of the case, the petition may be allowed and the petitioner may be permitted to remain on bail in accordance with the order dated 11.11.2014 till finalization of the trial. He further submits that no fruitful purpose would be served in case the present petition is not allowed and the order dated 11.11.2014 is quashed as has been ordered by the Revisional Court.

6. According to the counsel for the petitioner, even the quantity of the liquor which is alleged to be seized from the possession of the petitioner is too small a quantity for recalling of the order dated 11.11.2014. He submits that even on technicality ground, the non compliance of Section 59 A of the Excise Act cannot be sustained as the order of JMFC was after

hearing the prosecutor and therefore the trial Court cannot be said to have committed any illegality or infirmity while allowing the bail application.

7. Having considered the submissions put forth by the counsel for the petitioner and also taking note of the peculiar facts and circumstances of the case what is reflected is that the quantity of liquor seized is only 6.78 litres and the date of commission of offence is 28.10.2014. The petitioner had obtained bail on 11.11.2014 and since then he is on bail. The order of the Revisional Court was stayed by this Court as early as on 04.11.2015 i.e. the effect and operation of the impugned order stands stayed almost for 14 months. Last but not least, according to the counsel for the petitioner, the trial itself has reached at the fag end stage. Thus, in the opinion of this Court no fruitful purpose would be served if the veracity of the order dated 11.11.2014 or for that matter the order of the Revisional Court dated 26.10.2015 is appreciated on its merit at this juncture.

8. Thus, without entering into the merits of the case, this Court on account of efflux of time feels that no fruitful purpose would be served in deciding the case on merits. Accordingly, leaving open the issue raised in this petition to be considered in an appropriate case, the present petition is allowed at this juncture by setting aside the order of the Revisional Court dated 26.10.2015 and maintaining the order of the trial Court dated 11.11.2014. However, it is directed that the trial Court should ensure that the trial is completed at the earliest.

9. With the aforesaid observation, the present CrMP stands allowed.

**Sd/-
(P. Sam Koshy)
JUDGE**