

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.1735 of 2017**

- Shamsuddin Qureshi @ Maina Khan S/o Jigiriya Qureshi Khan, Aged About 52 Years R/o Ward No. 2, Pipariya, Police Station & Tahsil Khairagarh, District Rajnandgaon Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Khairagarh, District Rajnandgaon Chhattisgarh

---- Respondent

For Applicant	: Shri Abhishek Pandey, Advocate
For Respondent/State	: Shri Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****17.4.2017**

Heard on IA NO.01/2017 & 02/2017 for taking documents on record.

2. On due consideration, both the applications are allowed and the documents annexed with the interim applications are taken on record, if admissible in the matter.

3. Also heard the matter finally.

4. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicant, who has been arrested in connection with Crime No.57/2017 registered in Police Station Khairagarh, District Rajnandgaon for the offence punishable under Section 34(2) of the Chhattisgarh Excise Act.

5. Learned counsel for the applicant submits that the applicant has been arrested on 01.3.2017, charge sheet is yet to be filed and is remanded by Additional Chief Judicial Magistrate, Khairagarh. As per the allegation, 9.540 liters of liquor has been seized from the conscious possession of the applicant. The applicant is in jail for about one month and twenty days and he will not commit any offence in future, hence he may be released on bail. He would further submits that earlier the applicant was prosecuted in Criminal Case No.458/14, State vs. Maina @ Shamsuddin and was convicted by Additional Chief Judicial Magistrate, Khairagarh vide Judgment dated 14.8.2015. Against the said conviction under Section 34(2) of the CG Excise Act, the applicant had preferred Criminal Appeal No.23/15, the Additional Session Judge, Khairagarh vide judgment dated 04.8.2016 acquitted the applicant for the charges. Also the applicant has been acquitted in Criminal Case No.339/2009 vide judgment dated 06.01.2011, Criminal Case No.269/2009 vide judgment dated 16.9.2010 and in Criminal Case No.353/2010 vide judgment dated 28.7.2012 by the Additional Chief Judicial Magistrate, Khairagarh. Though he was charged for the offence in relation with Excise Act, ultimately he was acquitted from all the cases, which goes to show that he is innocent and has been falsely implicated in all the cases.

6. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant and would submit

that the applicant was arrested for possessing 9.540 liter liquor for the purpose of illegal sale. Also after consideration of the earlier involvement though not proved in the criminal court but there is suspicion for his involvement, present application for bail may be dismissed.

7. Perused the entire material.

8. On due consideration as the applicant was ultimately acquitted in all the four aforementioned cases in connection with offence under Section 34 of Excise Act, and in the present matter as per the allegation of the prosecution 9.540 liters of liquor has been seized, I am inclined to grant one last opportunity to the applicant so that he may remain in the society without committing any further offence in future.

9. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

10. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.50,000/- with two surety of 25,000/- each to the satisfaction of Additional Chief Judicial Magistrate, Khairagarh for his appearance before the said Court as and when directed.

11. It is made clear that this order granting bail to the applicant shall stand cancelled automatically without reference to the Bench by the Court below if (i) the trial Court finds that the applicant suppressed filing or pendency of any other application for grant of bail before this Court or the Hon'ble Apex Court intentionally;

(ii) the applicant does not cooperate in the trial; (iii) the applicant is found to be involved in any offence of the like nature; and (iv) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. If bail is cancelled automatically in view of the above , the Court below may proceed further under the provisions of law, under intimation.

Certified copy as per rules.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE