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HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.1893 of 2017**

- Chhuttan @ Deepak Singh S/o Krishna Singh, Aged About 30 Years R/o Santan Nagar, Kohka, Bhilai, District Durg Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through District Magistrate, Rajnandgaon Chhattisgarh

---- Respondent

For Applicant	: Shri BP Singh, Advocate
For Respondent/State	: Shri UKS Chandel, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****04.4.2017**

Heard the matter finally.

2. 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.47/2015 registered in Police Station Gendatola, Distt. Rajnandgaon for the offence punishable under Section 34(2) of the Chhattisgarh Excise Act.

3. Learned counsel for the applicant submits that on 18.8.2015 at 2.30 am, Police of Gendatola, Distt. Rajnandgaon seized one vehicle Maruti Suzuki 800 bearing registration No.CG-04 ZP 2943 which was being driven by juvenile Rajesh Sahu, S/o. Pappu Sahu. In the said vehicle, 176.4 bulk liters of liquor has been seized. On being asked, the said juvenile gave in writing to the

police that he is not having any permission to sale or transport the liquor and is not having any driving licence to drive the vehicle. Further the said juvenile also gave in writing that one Ghanshyam Manikpuri @ Pappu was with him who managed to abscond from the spot, the present applicant is the owner of the said maruti vehicle and he was transporting the liquor in the vehicle as directed by the present applicant and the said Ghanshyam @ Pappu. The police investigated the matter and since Rajesh Sahu was juvenile, separate charge sheet has been filed against him before Juvenile Justice Board, Rajnandgaon. Later on co-accused Ghanshyam Manikpuri was arrested and charge sheet has been filed against him before Chief Judicial Magistrate, Rajnandgaon. At that time also present applicant was alleged to be absconding. The concerned police reserved right for further investigation against the present applicant under the authority of Section 173(8) of the Cr.P.C. The said co-accused Ghanshyam was tried by Chief Judicial Magistrate Rajnandgaon in criminal Case No.149/16 on 30.8.2016. The trial Court acquitted Ghanshyam Manikpuri @ Pappu. As submitted the State had not preferred any appeal against the said acquittal.

4. Thereafter the applicant was arrested on 21.02.17. The police made investigation in relation with present applicant and has filed supplementary charge sheet against present applicant under Section 34(2) of the Excise Act before Chief Judicial Magistrate, Rajnandgaon which is also registered as Criminal

Case No.149A/2016. In the said charge sheet the police alleged that the present applicant was absconding after the seizure of the said liquor and the four wheeler, not traceable and as per written note given by the juvenile co-accused, he at the instance of acquitted co-accused Ghanshyam Manikpuri @ Pappu and the present applicant was transporting the said liquor. Both these materials collected prima facie may not be enough for the conviction of the present applicant in the matter. He is the first offender, admittedly he was the registered owner of the said vehicle as defined under the Motor Vehicles Act, 1988 Section 2(30), but the admission of co-accused is inadmissible in evidence act so as to hold the present applicant guilty. Also on the basis of same material co-accused Ghanshyam Manikpuri was acquitted . Case of the present applicant cannot be held as different but for the applicant is the owner of the said vehicle in addition. He will not commit any offence in future hence, he may be granted bail during trial.

5. Per contra, learned counsel for the State opposed the arguments advanced and would submit that in a vehicle which was registered in the name of the applicant, huge quantity of liquor i.e. 176.4 bulk liters were seized, the applicant was absconding since seizure, co-accused juvenile has stated regarding role of the present applicant and there was paper publication regarding the fact of absconding of the applicant goes to show that there is prima facie material against the applicant,

hence looking to the entire facts instant application may be dismissed.

6. Perused the entire material.

7. Any admission of the juvenile co-accused may not be prima facie considered as the evidence admissible under the evidence Act against the present applicant. Undisputedly the applicant is the registered owner of the said vehicle as defined under the motor vehicles act and he was not traceable after the incident till the arrest. But the said piece of evidence, prima facie does not indicate the involvement of the applicant and also as the co-accused was acquitted by the Chief Judicial Magistrate Rajnandgaon though the same allegation made by the juvenile co-accused that he at the instant of said acquitted co-accused and the present applicant transported the said liquor. Without commenting anything on its merits for the purpose of trial, I am inclined to grant liberty to the present applicant so that he may remain in the society without committing any similar offence.

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

9. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.2,00,000/- with two solvent sureties of Rs.1,00,000/- each to the satisfaction of Chief Judicial Magistrate, Rajnandgaon for his appearance before the said Court as and when directed.

10. It is further directed that till the conclusion of the trial, present applicant shall mark his appearance before the Police of Gendatola, District Rajnandgaon on **15th & 28 th of every month at 11.00 am .**

11. It is made clear that this order granting bail to the applicant shall stand cancelled automatically without reference to the Bench by the Cort 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.

12. Registrar (Judl.) is further directed to send a copy of the order to the concerned Chief Judicial Magistrate and also to provide a copy of the order to the respondent/State for placing it with the case diary to be returned to the concerned police for compliance and information.

13. It is further made clear that if the applicant without any cogent and proper reason does not appear before the Police of Gendatola, District Rajnandgaon, twice in the month as directed, the concerned police may inform the trial Court for the act and if his appearance found to be without any proper and cogent

reason, the instant order granting bail to the applicant shall automatically be cancelled by the trial Court without further reference to the Bench, under intimation.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

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