

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.3508 of 2017**

- Nitesh Gendre S/o Sanjay Gendre, Aged About 23 Years R/o Purani Basti, Ghasidas Chowk, Kohka, Ward No. 9, Bhilai, District Durg, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station Kumhari, District Durg, Chhattisgarh.

---- Respondent

For Applicant : Shri Tarun Dansena, Advocate
 For Respondent/State : Shri Ashok Swankar, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****20.6.2017**

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.19/2017 registered in Police Station Kumhari, Distt. Durg for the offence punishable under Section 34(2) of the Chhattisgarh Excise Act.

3. Learned counsel for the applicant submits that the applicant has been arrested on 19.4.2017, after investigation, concerned police has filed charge sheet against the present applicant, which is pending as Criminal Case No.299/17 before Judicial Magistrate First Class, Durg. Learned counsel for the applicant submits that no liquor has been seized from the applicant, he was the servant of co-accused Raj Kumar, Police has seized 78.480 bulk liters of foreign /

country liquor from a Maruti Car bearing registration No.CG 09 0301. The applicant is the registered owner of the said vehicle but he was not present in the spot at the time of the incident. He further submits that co-accused Nikhil who was driving the said vehicle was granted bail by this Court vide order dated 08.6.2017 in M.Cr.C. No.3132/2017. The applicant will not commit any offence in future, hence, he may be granted bail.

4. Per contra, learned counsel for the State opposes the bail application on the basis of the quantity of liquor so seized from the vehicle which was registered in the name of the applicant and there is no explanation under the law by the applicant.

5. Perused the entire material.

6. As per Section 2(30) of the Motor Vehicles Act, 1988 owner is defined and in the present matter the applicant is the registered owner of the said vehicle. There is no material to demonstrate whether the applicant has ever complied with the provisions of Section 133 of the Motor Vehicles Act, 1988 to give material information that in what circumstances the vehicle registered in his name was seized along with afore mentioned liquor from the spot. Also there is no material to demonstrate whether the applicant ever completed any formalities as provided under Section 50 of the Motor Vehicles Act.

7. Though the applicant was not present at the spot at the time of the incident but as he had not furnished the aforementioned information in the matter as required under the law, the burden goes to the applicant to prove his case. His case is distinguishable from

the case of co-accused Nikhil, who was aged about 19 years and as per the allegation driver of the vehicle though not caught by the investigating agency and arrested later on.

8. On due consideration, I am not inclined to grant bail to the applicant, consequently, the bail application is dismissed. However, he may revive the bail application after examination of the material witnesses during trial.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE