

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case (A) No.411 of 2017**

- Dukalu Lahre @ Dukaluram S/o Shri Rambhajan Lahre Aged About 50 Years Occupation Labour, R/o Village Bhawarchuban Binjhwarpara, Police Outpost- Bhawarpur, Thana & Tahsil - Basna, Civil & Revenue Distt. Mahasamund (Chhattisgarh)

---- Applicant**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station- Basna, District - Mahasamund (Chhattisgarh).

---- Respondent

For Applicant : Shri Sunil Sahu, Advocate
For Respondent/State : Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****21.6.2017**

At the outset learned counsel for the State/respondent would submit that as provided under Section 59A(i) of the CG Excise Act, 1915, no application for anticipatory bail shall be entertained by any court in respect of a person accused of an offence punishable under Section 49-A i.e. exceeding 5 bulk liters of liquor as in the present matter. Hence, the instant application is not maintainable under the law.

2. Heard the matter regarding maintainability of the instant application.

3. For relevance Section 59-A (i) is reproduced as under:

“(i) no application for an anticipatory bail shall be entertained by any court in respect of a person accused of an offence punishable under Section 49-A or in respect of a person

not being a person holding a licence under the Act or rules made thereunder who is accused of an offence covered by clause(a) or clause (b) of sub-section (1) of Section 34 with quantity of liquor found at the time or in the course of detection of such offence exceeding five bulk liter.”

4. A perusal of the said provision and as in the present matter as per allegation 81 bulk liters of country made liquor is the subject matter of Crime No.138/2017 registered by Basna Police Distt. Mahasamund under Section 34(2) of the CG Excise Act, 1915. With the above legal preposition, this court is lawfully bind to carry out the direction in the statute, this court is presently looking a matter under Section 438 of Cr.P.C. as a procedural Court. This Court is not hearing any matter in a writ petition, there is no pronouncement of the any court competent to declare the said provision is ultra virus.

5. With the above, this Court has left with no other option except to hod that the instant application is not maintainable.

6. Consequently, the instant application filed under section 438 Cr.P.C. is hereby dismissed as not maintainable.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE