

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4950 of 2017

- Kamal Kashyap S/o Arjun Kashyap, Aged About 36 Years, R/o School Para Kelaour, Police Station Darbha, District Bastar Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through the Police Station Darbha District Bastar Chhattisgarh.

---- Non-applicant

For Applicant – Shri P.K.Tulsyan, Advocate.

For Non-applicant/State – Shri Wasim Miyan, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

22-08-2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant was arrested in connection with Crime No.25/2017 on 04-4-2017 by P.S. Darbha District Bastar Chhattisgarh for the offence under Section 34(2) of the C.G. Excise Act, 1915 (in short 'the Act, 1915') and as the I.O. calculated the quantity of liquor so seized as 4.740 bulk liter, the applicant was released on bail bond by the I.O. itself. Thereafter, the charge sheet was filed before the JMFC Jagdalpur, Distt. Bastar, C.G. where the matter was registered as Criminal Case No.548/17 and the trial Court granted bail to the applicant on 11-05-2017 itself as the offence was bailable one under Section 34(1)(a) of the C.G. Excise Act, 1915 (for short 'the Act, 1915'). Thereafter, on 07-07-2017 the bail granted by the trial Court to the applicant in the present matter was cancelled on an application dated 06-07-2017 filed by the prosecution as total quantity of liquor so seized is 5.740 bulk liter not the 4.740 bulk liter. After cancellation of bail, the applicant re-arrested in the present matter on 7 July 2017, though technically the applicant was arrested in another matter Crime

No. 28/17 under Section 34(2) of the Act, 1915 on 07-04-2017, with this, immediately after release on bail on 04-04-2017 the applicant arrested in another matter on 07-04-2017 and till date thereafter the applicant is in custody technically from 07-07-2017 till today in the present matter and from 07-04-2017 till today in connection with Crime No. 28/17, P.S. Darbha, Distt. Bastar at Jagdalpur, in the said matter the applicant was granted bail in MCRC No.2963/17 dated 03-07-2017 but the bail bond were not furnished in toto as per the instruction received. With this, the applicant is in custody in the present matter since 07-07-2017 till date. The bail granted by this Court in MCRC No. 2963/17 dated 03-07-2017 in the said matter, it was duly informed that in one matter the applicant acquitted for the charges under Section 34(2) of the Act, 1915 in Crime No.41/14 and in relation with Crime No.43/11 under Section 36(C) of the Act, 1915, the trial Court awarded fine sentence which was duly paid and excepts this there are no other matter registered against the applicant. Present matter arose prior to the Crime No.28/17, with this, the applicant had not violated the terms and conditions imposed by this Court. He will not commit any offence in future and looking to the entire facts, he may be granted bail during trial.

3. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicant.

4. Perused the entire material.

5. Technically the applicant is languishing in jail since 07-07-2017 till date, i.e., for 1 month and 15 days, though he is in continuous custody since 07-04-2017 till date in another matter though he had granted bail in said matter, but bail bond are not yet furnished, looking to the entire facts regarding detention in the present matter, detention in connected matter and disposal of aforementioned two matter where the applicant acquitted in one matter and was awarded fine in another matter, I am inclined to grant one opportunity to

the applicant so that he shall not involve himself in any offence and shall live peacefully in society. Consequently, the instant MCRC is hereby allowed. The applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one solvent surety of the like sum to the satisfaction of the Judicial Magistrate First Class Jagdalpur, Distt. Bastar, C.G. for his appearance before the said Court as and when directed till trial.

6. 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 above, the Court below may proceed further under the provisions of law under intimation.

7. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge