

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5283 of 2017**

Smt. Laxmi Nag W/o Mutling Gota, Aged About 30 Years Caste
Mahara, R/o Village Bagichapara, Sukma, Tahsil Sukama, District
Sukama, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station
Sukama, District Sukama, Chhattisgarh

---- Respondent

For applicant	Mr. Praveen Dhurandhar, Adv.
For Respondent/State	Mr. Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****31-8-2017**

1. Heard finally.
2. The applicant has preferred this application for grant of bail as he is arrested on 13-7-2017 in connection with Crime No. 55/2017 registered in PS Sukma Civil Distt. South Bastar, Dantewara (CG) for offence punishable under Section 34 sub-section (2) of the CG Excise Act, 1915.
3. Learned counsel for the applicant submits that after investigation charge sheet has been filed against the present applicant and the co-accused Mutling Gota and the same is pending before the CJM Sukma as Cr. Case No. 245/2017. This is her first bail application before this Court. She is first offender aged about 30 years. As per allegation, during investigation police seized 10 bulk litre hand made country liquor from the conscious possession of the applicant and also seized 10 bulk litre hand made country liquor from her husband Mutling Gota, the then

Assistant Sub Inspector, Police Station Bhejji, Revenue Distt. Sukma. The Additional Sessions Judge, South Bastar Dantewara vide order dated 19-7-2017 allowed the application filed by husband of the applicant and not decided the application for bail filed by the applicant expressly whether learned Court had rejected the application or kept it pending but as there was no order of the said Court regarding the bail petition filed by the applicant, she had no option but to move this Court for grant of bail. It is submitted that the trial may take some time. Her case is at par with her husband who had also filed an affidavit in support of instant MCRC as husband of the applicant. She will not commit any offence in future if granted bail. She may be granted bail as the trial may take time.

4. Per contra, learned State counsel opposes the arguments advanced on behalf of the applicant on the basis of the quantity of the liquor so seized from the applicant. However he fairly concedes that no criminal antecedent of the applicant is reported by the police in the case diary.
5. Perused the matter.
6. As the applicant is the first offender, she is in jail since 1 month and 18 days till date, charge sheet has been filed, trial may take some time, the co-accused husband of the applicant has been granted bail by the Additional Sessions Judge, South Bastar, Dantewara, case of the present applicant is similar to her husband, and as submitted she will not commit any crime in future and considering entire facts of the case, I am inclined to grant one opportunity to the applicant to live peacefully in the

society without committing any crime. Consequently, instant MCRC is allowed. The applicant is directed to be released on bail on her furnishing a personal bond in the sum of Rs.30,000/- with one solvent surety of the like sum to the satisfaction of the CJM Sukma for her appearance before the said Court regularly as and when directed by the said Court.

7. 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: (iv) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. The applicant is further directed to appear before the concerned SHO/IO/in-charge of the Police Station Sukma, Civil Distt. South Bastar, Dantewara (CG) on every 1st and 3rd Monday of every month at 11 am positively till trial. If the applicant fails to do so, concerned police may intimate the trial Court and if the trial Court holds that the applicant remains absent without any cogent and proper reason as directed, the bail granted to applicant shall stand cancelled by the trial Court without further reference to the bench under intimation. If bail is cancelled automatically in view of above, the Court below may proceed further under the provisions of law under intimation.

8. After perusal of the order passed by the Additional Sessions

Judge, South Bastar, Dantewara dated 19-7-2017 in bail petition No. 65/2017, it appears that the present applicant and co-accused Mutling Gota had filed bail petition under Section 439 of the Cr.P.C. The concerned Sessions Judge after appreciating the entire merit allowed the petition filed by co-accused Mutling Gota but not said anything regarding present applicant, whether he rejected the petition filed by the applicant or kept it pending. It appears that learned Sessions Judge had written his order in a cursory and slipshod manner which is not appropriate. The concerned Judge is required to pass appropriate order for the petition filed by the applicant. Therefore, learned Additional Sessions Judge is directed to remain cautious and not to commit this type of mistake again while passing a judicial order.

9. On perusal of the said order, it is surfaced that the concerned Additional Sessions Judge held that as co-accused Mutling Gota is a member of the Scheduled Tribe hence as per second proviso of Section 59-A of the CG Excise Act, 1915, the offence against him is bailable one.
10. To examine this legal proposition, provisions of Section 34 sub-section (1)(a), (b), Section 34 sub-section (2) and its proviso, Section 59A of the CG Excise Act are relevant and applicable which are reproduced hereinbelow :-

“Section 34 - Penalty for unlawful manufacture, transport, possession, sale, etc.

(1) Whoever, in contravention of any provisions of this Act, or of any rule, notification or order made or issued thereunder, or of any conditions of a licence, permit or pass granted under this Act,--

(a) manufactures, transports, imports, exports, collects or possesses any intoxicant; or

(b) save in the cases provided for in Section 38, sells any

intoxicant; or

(c)	xxx	xxx	xxx
(d)	xxx	xxx	xxx
(e)	xxx	xxx	xxx
(f)	xxx	xxx	xxx
(g)	xxx	xxx	xxx
(h)	xxx	xxx	xxx

shall subject to the provisions of sub-section (2), be punishable for every such offence with imprisonment for a term not less than six months which may extend to two years and fine which shall not be less than Ten thousand rupees but which may extend to Fifty thousand rupees:

Provided that when any person is convicted under this section of any offence for a second or subsequent time, he shall be punishable for every such offence with imprisonment for a term not less than one year but which may extend to five years and with fine which shall not be less than Twenty thousand rupees but which may extend to two lac rupees.

(2) Notwithstanding anything contained in sub-section (1), if a person is convicted for an offence covered by clause (a) or clause (b) of sub-section (1) and the quantity of the intoxicant being liquor found at the time or in the course of detection of the offence exceeds five bulk litre, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than twenty five thousand rupees but may extend to one lac rupees:

Provided that when any person is convicted under this Section for an offence for second or subsequent time, he shall be punishable for every such offence with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than fifty thousand rupees but may extend to two lac rupees.

Section 59A - Certain offence under the Act to be non-bailable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (No. 2 of 1974) or Section 59 of the Act,

- (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 litre.
- (ii) a person, accused of an offence punishable under Section 49-A or a person not being a person holding a licence under the Act or rules made thereunder who is

accused or an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 of with quantity of liquor found at the time or in the course of detection of such offence exceeding five bulk litre shall not be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release and in case such an application is opposed by the Public Prosecutor, unless the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that no court shall order for detention of such person in custody during the course of investigation for total period exceeding 60 days where it relates to 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 the offence exceeding fifty bulk litres and 120 days where it relates to an offence under Section 49-A and on the expiry of such period of 60 days or 120 days, as the case may be, and in the event of the report of complaint not being filed the accused shall be released on furnishing bail.

(iii) the limitations for grant of bail specified in clause (ii) are in addition to limitations prescribed under the Code of Criminal Procedure, 1973 (No. 2 of 1974) or any other law for the time being in force regarding grant of bail.

Provided that the offence under Clause (a) and (b) of sub-section (1) of Section 34, relating to "Landa" and "Handiya" made from "rice" or "millet", as the case may be, and "out-still liquor" made from "Mahua" shall be bailable, if such offence is committed within the Scheduled Area, by a person who is a member of the Scheduled Tribe(s) of the said Scheduled Area.

11.A perusal of the proviso after Clause – (iii) of Section 59A of the Act of 1915, it appears that out-still liquor made from Mahua (as in the present case) shall be bailable under Clause (a) and (b) of sub-section (1) of Section 34 of the Act of 1915. In the present case, hand made country liquor separately seized from co-accused Mutling Gota is 10 bulk litre. With this the case of the said co-accused comes under the ambit of Section 34 sub-section (2) of the Act of 1915, not under the provisions of Section 34 sub-section (1)(a) and (b) of the Act of 1915. Therefore, looking to the quantity of liquor so seized from co-accused

Mutling Gota, his case cannot come under the ambit of Section 34 sub-section (1)(a) and (b) of the Act of 1915. With this, the proposition of the learned Additional Sessions Judge that the case of the co-accused is bailable one is not correct and not as per the provisions of law.

12. The concerned Judge is directed to read the complete provisions of related laws so as to come to the conclusion regarding any legal fact. Said procedure shall not be in a haste or against the settled provisions of law. Though grant of bail in the given matter is within the jurisdiction of the concerned Judge but at the same time, the appreciation that the matter is bailable one is inappropriate and not as per the provisions of law. Learned Additional Sessions Judge concerned is directed not to repeat this type of grave legal mistake in future.
13. Registrar General is directed to send copy of the order to the Judges working within the State for future guidance and compliance.
14. Copy of the order be also sent to concerned Additional Sessions Judge, South Bastar, Dantewara for future guidance and compliance.
15. A copy of the order be supplied to the non-applicant/State for placing it with the case diary to be returned to the concerned police for compliance and information.
16. MCRC allowed.
17. CC as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge