

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1283 of 2016

- Gandhi Chandrakar S/o Nizam Singh Chandrakar, Aged About 46 Years R/o Village Tiloda Bajrang Chowk Chowki Machandur, Police Satation-Utai, Tahsil And District Durg (Chhattisgarh).

---- Applicant

Versus

- State Of Chhattisgarh Through The District Magistrate, District Balod (Chhattisgarh).

---- Respondent

For Applicants : Mr.Goutam Khetrapal, Advocate.
For Respondent : Mr. Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

17/11/2017

1. Apprehending arrest in connection with Crime No.92/2017 registered at Police Station- Excise Police Gunderdehi, District – Balod (C.G.), for the offence punishable under Section 34(2) of the Excise Act, the applicant has preferred this application for grant of anticipatory bail.
2. In the case, in hand 16.2 bulk litre foreign liquor were seized from the possession of accused Balla Chandrakar. Applicant was present during the proceeding of search and seizure. He has been falsely implicated in the case as one of the co-accused and no case is made out against the applicant. On the basis of the material on record, it is prayed that applicant be benefited with grant of anticipatory bail.
3. Learned State counsel opposes the bail application and the submissions made in this respect. Section 59 of the Act, 1915 provides

that no application for anticipatory bail shall be entertained in Court for such offences, hence, prayed that the application be rejected.

4. Heard both the parties and perused the case diary.
5. The fact of the case are these, that it was found in the investigation that applicant and co-accused Balla Chandrakar were in joint possession of the foreign liquor seized from the possession of co-accused Balla Chandrakar, as per the finding in the investigation. Statement was made by the co-accused Balla Chandrakar that the liquor found in search from his house belonged to him as well as to his brother Gandhi Chandrakar jointly. The statement of witnesses under Section 161 of CrPC also discloses that the place from where the liquor was seized was in joint possession of applicant and Balla Chandrakar and applicant was present at the time of search and seizure, who gave consent for the place to be searched.
6. Learned counsel for the applicant has placed reliance on the judgment of this Court in ***Sujesh Kumar Turkar Vs. State of Chhattisgarh***, 2007(1) MPHT 39 C.G. in which relying on the judgment of MP High Court ***Suresh Kumar Lahria Vs. State of M.P. and others***, 2004(4) MPHT 205 (DB) it was held that there can be an exception to the rule under Section 59(A) of CG Excise Act if, the accused is competent to show that no offence inviting from of Section 59A(i) of the Act is made out and the basic ingredients are absent. It was mentioned in Naresh Kumar Lahria(supra) that the Court is not bestowed of power only because of in the FIR such offence are mentioned in the FIR if the accused can putforth that no such case is made out the Court can entertain the application for grant of anticipatory bail.

7. This question shall be answered differently in each case whether applicant has succeeded to establish that no case is made out against him to be arrayed as an accused for offence under Section 34(2) of CG Excise Act.
8. Looking to the statement of independent witnesses in this case, although, the seizure memo shows recovery and seizure only from the co-accused Balla Chandrakar, it cannot be said in the present case that no case is made out against the applicant on the basis of the material on the case diary, hence, for these reasons, the bar under Section 59(A) of CG Excise Act shall remain inforce in this case and this application is not entertainable. For these reasons and on the basis of observations made hereinabove. This application does not deserve to be entertained.
9. Accordingly, this anticipatory bail application is rejected.

Sd/-
(Rajendra Chandra Singh Samant)
Judge