

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case (A) No.1370 of 2016**

- Bhushan Tandi S/o Shri Ishwar Tandi Aged About 34 Years
Caste- Gada, R/o Village- Bhatkunda, Thana- Sankara, Civil &
Revenue District- Mahasamund, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police
Station- Sankara, District- Mahasamund, Chhattisgarh

---- Respondent

For Applicant	: Shri Sunil Sahu, Advocate
For Respondent/State	: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****29.3.2017**

This application under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Code') has been filed by the applicant apprehending his arrest in connection with Crime No.64/2016 registered at Police Station Sankara, Distt. Mahasamund for offence punishable under Section 34(2) of the Chhattisgarh Excise Act.

2. Learned counsel for the applicant would submit that provisions of Section 34 of the Excise Act, 1915 (for short 'the Act of 1915') would not be applicable in the matter. As per the allegation, at the backside of the house of the applicant 18 liters of liquor has been seized. It is not demonstrated that the applicant was in possession of the said land, no liquor has been seized

from the possession of the applicant and as the possession is not proved, provision of Section 34 of the Act 1915 would not be applicable. With this, the extended provision under Section 49A(1) of the Act is not applicable, hence, the applicant may be granted bail under Section 438 of the Code.

3. Per contra, learned counsel for the respondent opposed the arguments advanced on behalf of the applicant.

4. In the present matter unnumbered FIR is recorded. After perusal of the said unnumbered FIR and the statement of the witnesses recorded under Section 161 of the Code, it cannot be said at this moment that the liquor so seized was not from the possession of the applicant. Possession is a broad term which not only means when the substance is seized from the body or inside the house only. After consideration of unnumbered FIR and the statement, in the considered view of this Court, prima facie the prosecution has proved that the liquor so seized was in the conscious possession of the applicant, with this, Section 34 and Section 49A(1) of the Act 1915 are applicable in the present matter. Hence, I am not inclined to grant anticipatory bail to the applicant.

5. Consequently, the application filed under Section 438 of the Code is dismissed.

SD/-
(Chandra Bhushan Bajpai)
JUDGE