

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1377 of 2017

- Narayan Nirmalkar @ Bhagela S/o Itwary Dhobi, Aged About 50 Years R/o Village Badgaon, Police Station Mandir, Hasoud, Tahsil Civil & Revenue District Raipur, Chhattisgarh.

---- **Petitioner**

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station Mandir Hasoud, District Raipur, Chhattisgarh.

---- **Respondent**

For Applicant : Mr. N. Naha Roy, Advocate

For Respondent/State : Mr. Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

29-03-2017

1. This is second bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicant who has been arrested on 25-7-2016 in connection with Crime No. 194 of 2016, registered at Police Station Mandir Hasoud, District Raipur (CG) for the offence punishable under Section 34 (2) of the Chhattisgarh Excise Act.
2. As per prosecution case, on information being received a raid was conducted by the police party, the applicant was found in possession of illicit liquor measuring about 7.380 bulk liters, the same was seized from him and thereby the aforesaid offence was committed.
3. Learned counsel appearing for the applicant would submit that this is second bail petition and earlier first bail application was dismissed with liberty to revive the same after examination of the seizure witnesses on 20-9-2016.. He would further submit that one of the seizure witness namely Kush Dheewar has been examined and he has not supported and though the other seizure witness Bhupendra Sharma appeared before the trial Court on

different dates, but his statement was not recorded and the case was adjourned. He referred the order sheet dated 6-1-2017, 17-1-2017 and 31-2-2017 and would submit that as per instructions till yesterday no statement of seizure witness Bhupendra Sharma was recorded. He would further submit that charge-sheet has been filed, the applicant is in jail since 25-7-2016 and no further investigation is necessary, therefore, the present applicant may be released on bail.

4. On the other hand, State counsel opposes the bail application. However, he is not able to dispute the fact that one of the seizure witness has been examined and he has not supported the case of prosecution and the statement of another seizure witness was not recorded despite he appeared on different dates before the trial Court.
5. I have heard learned counsel for the parties, perused the case diary and documents.
6. Perused the statement of seizure witness Kush Dheewar which would show that he has not supported the case of prosecution. Also perused the order sheets dated 6-1-2017, 17-1-2017 and 31-2-2017 which would show that though another seizure witness Bhupendra Sharma appeared on the aforesaid dates before the trial Court, but his statement was recorded.
7. Taking into consideration the facts and circumstances of the case and further considering the fact one of the seizure witness has not supported the case of prosecution and the statement of another seizure witness was not recorded despite he appeared on different dates before the trial Court and also further considering the fact that charge-sheet has been filed, the applicant is in jail since since 25-7-2016 and no further investigation is necessary, I am inclined to release the applicant on bail.
8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed and it is directed that the applicant shall be released on bail on his

furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court. He shall also appear before the trial Court as and when directed.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Raju