

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 952 of 2017

- Ganesh Jaiswal S/o Shri Ramu Jaiswal, Aged About 32 Years, Caste - Jaiswal, R/o Azad Chowk, Pendra, Police Station Pendra, District Bilaspur Chhattisgarh., Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Pendra, District Bilaspur Chhattisgarh., Chhattisgarh

---- Non-applicant

For Applicant – Shri Achyut Tiwari, Advocate.

For Non-applicant/State – Shri Vivek Singhal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

16-03-2018

1. Apprehending arrest in connection with Crime No.92/2017, registered at Police Station – Pendra, District Bilaspur, Chhattisgarh for offence punishable under Section 34(2), 59-A of the Excise Act, the applicant has preferred this application for grant of anticipatory bail.

2. It is submitted by the learned counsel for the applicant that this is second bail application filed by the applicant under Section 438 of the Cr.P.C. before this Court for grant of anticipatory bail. His first anticipatory bail application was dismissed for want of prosecution. It is further submitted that the applicant has been falsely implicated in this case. No seizure of liquor has been made from this applicant and at the time of incident this applicant was undergoing treatment in hospital. The applicant has been roped only on the basis of memorandum statement given by the co-accused. Hence, no case is made out against him. Therefore, it is prayed that the applicant may be benefited with grant of anticipatory bail.

3. Learned counsel for the non-applicant/State opposes the application and submits that the applicant is having criminal history of three cases under

various provisions of the IPC and apart from that there is evidence that the applicant was present on the spot and taking benefit of darkness he made his escape successfully. Hence, no case is made out for grant of anticipatory bail.

4. I have heard the learned counsel for the parties and perused the case diary.

5. According to the prosecution case, on the date of incident this applicant was seen with another co-accused person riding on a motorcycle carrying cartons of foreign liquor and when the police personnel of P.S. Pendra stopped them, this applicant fled away from the spot on his motorcycle and the co-accused was caught, from whose possession 43.200 bulk liter foreign liquor was seized and further on his memorandum statement, 31 cartons of foreign liquor were also seized from another place, in total 267.84 bulk liter liquor was seized.

6. Considered on the submissions made and contents of the case diary.

7. Considered on the material present in the case diary. There is bar under Section 59-A of the C.G. Excise Act, 1915 (in short 'the Excise Act') that provisions of anticipatory bail shall not be applicable for commission of offence under the provisions of the Excise Act. But, there is a view, that in case the submission have force that no case is made out against the applicant under the Excise Act, then the provisions under Section 59-A of the Excise Act shall not be attracted, it has been held in **Naresh Kumar Lahria v. State of MP, 2004 (4) MPHT 205.**

8. Considered on the evidence present in this case against this applicant and on that basis, I feel inclined to grant anticipatory bail to this applicant.

9. Accordingly, the anticipatory bail application is allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him on his executing a

personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions :

- (i) that the applicant shall make himself available for interrogation before the investigating officer as and when required;
- (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

10. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge