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HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 10 of 2019**

Mahendra Patel S/o Santram Patel Aged About 40 Years R/o Village Khursipahar Police Station Basna, Tahsil- Basna, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through Police Station Basna District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh.

---- Respondent

For the Applicant : Shri Sanjay Agrawal, Advocate.
For the Respondent/State : Shri A.N. Bhakta, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****15.01.2019**

1. Heard on application under Section 438 of the Code of Criminal Procedure, 1973.

2. This is the first bail application filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the applicant who is apprehending arrest in connection with Crime No. 398 of 2018, registered at Police Station – Basna, District – Mahasamund, Chhattisgarh for the offences punishable under Section 34(2) of the Excise Act and Sections 420, 467, 468 and 120B/ 34 of the Indian Penal Code.

3. It is submitted by counsel for the applicant that the applicant has been falsely implicated in this case. This applicant was not present on the spot where the seizure of illicit liquor was made from the co-accused persons,

namely, Raju, Sanjay and Sunny. The name of this applicant has appeared only in the memorandum statement given by co-accused – Rajesh Patel which is not legally admissible evidence. After completion of investigation, the charge-sheet has been filed. Hence, it is prayed that the applicant be enlarged on anticipatory bail.

4. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that the application under Section 438 of the Cr.P.C. is barred by Section 59A of the Chhattisgarh Excise Act. Hence, no case is made out for grant of anticipatory bail to the applicant.

5. Heard counsel for both the parties and perused the case diary.

6. On the date of incident, the police personnel of police station Basna made a seizure of 500 cartons of foreign liquor from a Truck bearing registration No. M.P. 06 HP 2730 from the co-accused persons, namely, Raju, Sanjay and Sunny. The name of this applicant has appeared only on the statement given by one Rajesh Patel.

7. Considered the entire material present in the case-diary. The submission that the application under Section 438 of the Cr.P.C. barred by Section 59A of the Chhattisgarh Excise Act will not be applicable in this case. Hence, for these reasons, I am of the considered view that the applicant deserves to be released on anticipatory bail.

8. Accordingly, the anticipatory bail application is allowed and 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 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 them 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.'

Sd/-

(Rajendra Chandra Singh Samant)
Judge