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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 171 of 2019

- Samudri Devi W/o Khora Ram, Aged About 65 Years, R/o Thanganpara, P. S. and Tahsil Ambikapur, District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Kotwali, Ambikapur, District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Non-applicant

For Applicant – Shri Goutam Khetrapal and Shri Amit Verma, Advocates.
For Non-applicant/State – Shri Mahesh Mishra, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22-02-2019

1. Apprehending arrest in connection with Crime No.477/2018, registered at Police Station – Kotwali, Ambikapur, District Surguja, Chhattisgarh for offence punishable under Section 34(2) of the Chhattisgarh Excise Act, 1915 (in short 'the Act'), the applicant has preferred this application for grant of anticipatory bail.
2. It is submitted by learned counsel for the applicant that the applicant has been falsely implicated in this case. The applicant is a woman of 65 years who is a member of Scheduled Tribes community. According to the notification of the State, the members of the Tribe have entitlement to manufacture and keeping in possession country-made liquor. When the applicant was arrested at the time of seizure by the police personnel she was released on bail on the ground of exemption granted to the members of the Scheduled Tribes under Section 61-D of the Act, in which the limit of liquor permitted to be possessed by the household was 15 liters according to the previous notification, but now that has been reduced to 5 liters, hence, for these reasons, it is prayed that the applicant has entitlement on this ground. Also, that she was earlier released on

bail by the officer arresting her. Therefore, it is prayed that the application may be allowed.

3. Learned counsel for the State/non-applicant opposes the application and submits that 9 bulk liters of illicit liquor were seized from possession of this applicant, even then the officer arresting her has released her on bail erroneously, such erroneous decision of the concerned officer cannot be made a ground for release of the applicant on anticipatory bail, as such application is barred under Section 59-A of the Act, therefore, the application may be rejected.

4. Heard learned counsel for the parties and perused the case diary.

5. It is clearly a case in which 9 bulk liters of illicit liquor were seized from the possession of this applicant. It is not a case where there is any previous order granting bail to the applicant by any competent Court. The provision under Section 61-D of the Act is a provision entitling possession of liquor in prescribed limit for a household of member of Scheduled Tribes. Section 61-D of the Act is not a provision for entitling grant of bail regular or anticipatory, if the liquor is found more than the prescribed limit in a household of member of Scheduled Tribes, or that such member will be exempted from being prosecuted under the Act. It is clear that this applicant was found in possession of illicit liquor in excess to the limit prescribed for a household. Therefore, she had no entitlement for non-prosecution under Section 61-D of the Act. Her release on bail by the officer arresting her was erroneous which cannot be made a ground for anticipatory bail to her. Therefore, after due consideration, I do not find this application entertainable. Accordingly, the application is rejected.

Sd/-

(Rajendra Chandra Singh Samant)
Judge