

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****M.CR.C.(A). No. 1077 of 2019**

Manish Agrawal, S/o. Radheyshyam Agrawal, Aged About 40 Years, R/o. Naila Police Station and Tehsil Janjgir, District- Janjgir-Champa, Chhattisgarh.

----Applicant**Versus**

State Of Chhattisgarh, Through : Station House Officer, Police Station Janjgir, District- Janjgir-Champa, Chhattisgarh.

---- Respondent

For Applicant	: Mr. Mrigendra Singh, Sr. Advocate with Mr. Sumit Singh, Advocate
For Respondent	: Mr. Chandra Bhushan Kesharwani, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****23/08/2019**

1. Apprehending arrest in connection with Crime No.713/2018, registered at Police Station – Janjgir, District – Janjgir – Champa (C.G.) 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 the applicant has been falsely implicated in this case. No case is made out against the applicant on the basis of the material present in the case diary. Seizure of illicit liquor was made from the possession of one co-accused Surendra Nayak. The present applicant is roped as an accused only on the basis of the statement made by the co-accused and that co-accused has been tried and acquitted by the trial Court. Apart from that one another co-accused Dharendra Yadav has been benefited with grant of anticipatory bail by this Court vide order dated 13.02.2019 in M.Cr.C.(A) No.113 of 2019.

Therefore, there is no categorical evidence against the applicant that he was in possession of the illicit liquor. Reliance has been placed on the judgment of Coordinate Bench of this Court in *Gyanchand Jain Vs. State of C.G.*, reported in *2016 (2) C.G.L.J. 295*. Therefore, it is prayed that the applicant may also be granted anticipatory bail.

3. Per contra learned State counsel opposes the application for grant of bail and the submissions made in this respect. It is submitted that the applicant is the main accused. The co-accused Surendra Nayak was in fact an employee of this applicant and according to the prosecution case, he was working under the instruction of this applicant as keeping guard to the illicit liquor that was in possession of this applicant. The acquittal of co-accused can not be made a ground for grant of anticipatory bail in favour of the applicant, because it was only for the reason that the prosecution was unable to prove the case beyond reasonable doubt against the co-accused. Further the co-accused Dhirendra Yadav, who have been granted anticipatory bail by this Court had a different case and also that Dhirendra Yadav has not been prosecuted on the basis of the conclusion arrived at in the investigation. Under the provisions of Section 59 (A) of the C.G. Excise Act, any application for grant of anticipatory bail can not be entertained, therefore, the application be rejected.
4. I have heard the learned counsel for the parties and perused the case diary and the documents placed on record.
5. According to the prosecution case, the applicant is the proprietor of Radheshyam Tent House situated in Naila. On the date of incident, the police party raided the go-down of Radheshyam Tent House

and 3490.90 bulk liters illicit liquor was seized. The co-accused Surendra Nayak made statement to the police that he is an employee of this applicant and he was working on his instructions. Diary statement also reveals the same fact.

6. Considered the submissions made and the contents of the case diary. The finding of acquittal against co-accused certainly does not make a ground in favour of the applicant because the applicant is yet to be tried, who is still in absconsion and further the order for release of the co-accused on anticipatory bail had been on different ground, which has found support from the fact that he has not been prosecuted. The case against the applicant is clearly covered under Section 59 (A) of C.G. Excise Act, which bars entertainment of anticipatory bail application. In Gyanchand Jain (supra), the Court found reasons to hold that seizure of liquor was doubtful on account of various reasons presented before the Court and there is no such reason present for this Court, hence for this reason, this Court is not inclined to extend the benefit of Section 438 of Cr.P.C. to the applicant.
7. Accordingly, the anticipatory bail application filed under Section 438 of Cr.P.C. is rejected.

Sd/-
(Rajendra Chandra Singh Samant)
Judge