

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5307 of 2019**

- Ketu Nirmalkar S/o Ramu Nirmalkar Aged About 35 Years Occupation-Driver,r/o Ward No.27 Polsai Para,durg, Police Station Durg Tehsil And District Durg, Chhattisgarh, District : Durg, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station- City Kotwali Civil And Revenue District Kawardha (Kabirdham), Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

---- Non-applicant

For Applicant : Shri Chitendra Singh, Advocate.

For Non-applicant : Shri Vaibhav K. Agrawal, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****02.09.2019**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and no other bail application is pending before any other Court.
2. Perused the case diary provided by the learned counsel for the State in connection with crime No. 103/2019 registered at Police Station – City Kotwali, District – Kabirdham(C.G.) for the offence punishable under Section 34(2) of the Excise Act.
3. Case of the prosecution, in brief is that on 08.03.2019 at about 3:00 pm near village Rambhepurkala, Inspector Sushil Malik posted at police station Kawardha stopped one Scorpio vehicle registration No. C.G.07-AU-4056. Driver and another person who was sitting with the driver ran away from the said vehicle by taking advantage of the

darkness. The said Inspector seized 234 bulk liters foreign liquor from the said vehicle. As per the owner of the said vehicle it was given to the applicant.

4. Learned counsel for the applicant argued that the applicant has no criminal background, he is innocent, therefore, he shall be released on bail.

5. On the other hand, learned counsel for the State opposes the bail application, however, submits that there is no criminal antecedent against the applicant.

6. The counsel for the applicant further submitted that the seizure witnesses have been examined who turned hostile.

7. Mere turning hostile of the seizure witnesses is not itself sufficient ground to enlarge the accused on bail. Moreover in the case in hand Investigating Officer is to be examined.

8. Looking to the facts and circumstances of the case, looking to the materials available on record, looking to the huge quantity of the alleged seized foreign liquor, this Court is not inclined to give benefit of Section 439 Cr.P.C. to the applicant.

9. Accordingly, the present bail application is rejected. However, The trial Court is directed to expedite the trial and dispose off the case as soon as possible.

10. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE