

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No.1126 of 2020**

- Dilip Tandon S/o Amardas Tandon Aged About 28 Years R/o Village Gadadih, Police Station Bhatapara Gramin, District Baloda Bazar Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Of Police Station Bhatapara Gramin District Baloda Bazar Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondent

For Applicant	:	Shri HAPS Bhatia, Advocate
For Respondent/State	:	Smt. Hamida Siddiqui, Dy.AG

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****08/12/2020**

Heard.

1. The applicant has preferred this application under Section 438 of Cr.P.C., apprehending his arrest in connection with Crime No.118/2020, registered at Police Station Bhatapara Gramin, District Baloda Bazar-Bhatapara for alleged commission of offence under Section 34(2) of CG Excise Act.
2. Case of the prosecution is that on receipt of secret information, when the police raided the premises of co-accused Pilaram, huge quantity of foreign liquor was found. Allegation against the applicant is that upon enquiry, the accused was arrested by the police and disclosed in his memorandum that the applicant is also involved in the commission of offence.
3. Learned counsel for the applicant submits that the only basis for registering offence against the applicant is memorandum of the co-accused. It is further submitted that except that memorandum statement, there is no other material, on the basis of which, it can be said that the applicant is prima facie involved in the illegal possession, transportation, sale and purchase of liquor, in contravention of the provisions contained in the CG Excise Act. He would next argue that since no recovery is proposed under the said memorandum, the present is a case of no evidence against the applicant, therefore, it is a case of

exceptional nature for invoking jurisdiction under Section 438 of Cr.P.C. and therefore, bar created under Section 59-A of CG Excise Act would not come in the way of grant of bail. In these circumstances, the applicant may be granted bail.

4. On the other hand, learned counsel for the State/non-applicant opposes the bail application by submitting that even though, the applicant was not found at the spot nor from his possession, any seizure has been made, however, the co-accused Pilaram was present at the spot and from his possession, huge quantity of liquor has been seized. It is further submitted that in the memorandum statement of co-accused-Pilaram, it is stated that the applicant is also involved in sale, purchase and transportation of liquor. It is lastly submitted that looking to the quantity of seizure of liquor, which is more than 5 bulk liter, bar created under Section 59-A of the CG Excise Act would come in the way of grant of bail, therefore, the anticipatory bail application of the applicant is not maintainable and the same is liable to be rejected.

5. As far as maintainability of the present bail application is concerned, this Court in its order dated 04-12-2020 passed in MCRCA No.1172 of 2020 (***Bhima @ Jagdev Jaiswal vs. State of Chhattisgarh***) has held that notwithstanding bar created under Section 59-A of CG Excise Act, where no prima facie case is made out, jurisdiction under Section 438 of Cr.P.C. is not taken away and in appropriate cases, even though exceptional nature, benefit of anticipatory bail can be granted. In the present case, even according to the case of prosecution, when premises were raided, the present applicant was not present at the spot and no seizure has been made from the applicant and only on the basis of memorandum statement of co-accused Pilaram, the applicant is involved in the alleged offence. In the absence of any recovery to be made from the applicant and only on the basis of memorandum statement of co-accused, it appears that involvement of the applicant is based on such documents without any other material to prima facie involve the applicant. Therefore, the present is a fit case for grant of bail.

6. Accordingly, the application is allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he will be released on bail by the arresting officer on his furnishing a personal bond for a sum of Rs.25,000/- with one local surety for the like amount to the satisfaction of the arresting officer with following further conditions that:

- (i) the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii) 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) the applicant shall cooperate with the investigation as and when he is called.

Certified copy as per rules.

SD/-
(Manindra Mohan Shrivastava)
Judge