

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURMCRCa No. 1391 of 2020

1. Dilip Kumar Suryawanshi S/o Shri Baburao Suryawanshi Aged About 53 Years R/o Village Gondkhairi, Police Station Kalmeshwar Amrawati Road Nagpur, Present Address Behind Sai Mandir Sawarkar Nagar In The House Of Sajjan Pawar, Wardha Road Nagpur, District Nagpur (Maharashtra).

---- Applicant

Versus

1. The State Of Chhattisgarh Through The Station House Officer, Police Station Farasgaon, District Kondagaon Chhattisgarh.

---- Respondent

For Applicant Mr. Sunil Sahu, Advocate

For Respondent /State Mr. Ravish Verma, Govt. Advocate

Hon'ble Mr. Justice Prashant Kumar Mishra

Order on Board15-12-2020

1. The applicant has preferred this ***first bail application for grant of anticipatory bail***, as he apprehends his arrest in connection with Crime No.13/2020, registered at Police Station Farasgaon, Dist. Kondagaon (CG), for offence punishable under Section 34 (2) of the Chattisgarh Excise Act (for brevity 'the Act').
2. Tata 407 vehicle bearing registration No.MH-40-AK-5392 (for brevity 'the vehicle') was found transporting 720 bulk liters of Goa Whiskey when the vehicle was traveling from

Raipur to Jagdalpur on 5-2-2020. Two accused persons namely; Umesh & Ritik were found driving and traveling in the vehicle. Both the accused were arrested on the spot. The present applicant has been made accused for the reason that he is the owner of the vehicle which was transporting the illicit liquor.

3. Learned counsel for the applicant would draw attention of the Court to document Annexure – A/4, a notarised agreement dated 20-8-2019, whereby the applicant has sold the vehicle to one Umesh, who is one of the accused in the present case and has already been arrested. Learned counsel would also submit that except for the registration papers of the vehicle there is no other material against the applicant.
4. On the other hand, learned counsel for the State would oppose the bail application. He would submit that as long as the applicant is the registered owner of the vehicle he would be responsible for transportation of illicit liquor.
5. Learned counsel appearing for the State would further refer to the law laid down by the coordinate Bench of this Court in ***Pankaj Samundre v State of Chhattisgarh***¹ wherein it has been held that for an offence under Section 34(1)(a) of the Chhattisgarh Excise Act, 1915 the provisions of Section 438 of the Cr.P.C. are not applicable in view of express provision contained under Section 59-A(i) of the Act.
6. I shall first consider the objection raised by the learned counsel for the State by referring to the decision rendered in ***Pankaj Samundre*** (supra).

¹ MCRCA No.1168 of 2014 (decided on 6-1-2015)

7. This Court in ***Pankaj Samundre*** (supra), after referring to the decisions rendered by the Division Bench of the MP High Court in ***Naresh Kumar Lahria v State of MP and Others***² and the decision rendered by the Supreme Court in ***Rajamani v State of Kerala***³ has held that in view of Section 59-A(i) of the Act an accused who has allegedly committed offence under Section 34(1)(a) of the Act is not entitled for anticipatory bail if ingredients of the said offence are available against him.
8. In para 10 of the decision rendered in ***Pankaj Samundre*** (supra) the coordinate Bench has quoted a paragraph from ***Naresh Kumar Lahria*** (supra). Para 10 is quoted below for ready reference :

10) In the later part of judgment, the MP High Court has further held that it would be open to the accused to show that no offence inviting frown of section 59A(i) is made out as the basic ingredients are absent, and held as under :

“.....Similarly, we have no hesitation in holding that it would be open to a accused to show that no offence inviting frown of Section 59A (i) of the Act is made out as the basic ingredients are absent. It needs no emphasis that it would be dependent of the fact of each case. We may hasten to state here that merely because Section 438 is not applicable to certain categories of offences, the Court is not bereft of power only because in the FIR the said offences are mentioned. It can not be stated with certitude that if the accused can putforth a case or make out of a case, though the offences which have been mentioned under Section 59A (i) of the Act

2 2004 (4) MPHT 205 (DB)

3 2013 (4) SCC 139

do find mention in the FIR, but essentially and factually the case does not fall under the said provision, irrefragably the Court can entertain the application for grant of anticipatory bail because it is not the nomenclature which should govern the scenario but the real essence.....”

9. It is, thus, apparent that merely because Section 438 of the Cr.P.C. is not applicable to certain categories of offences, the Court is not bereft of power only because in the FIR the said offences are mentioned. If the accused can put forth a case or make out of a case, though the offences which have been mentioned under Section 59A (i) of the Act do find mention in the FIR, but essentially and factually the case does not fall under the said provision, irrefragably the Court can entertain the application for grant of anticipatory bail.
10. It is also to be seen that the power under Section 59-A(i) of the Act gets attracted when the accused has allegedly committed the offence under Section 49-A or under Section 34 (1) (a) or (b) whereas in the present case the applicant has allegedly committed the offence under Section 34 (2) of the Act.
11. In the case at hand, the applicant was not present on the spot. The illicit liquor has not been recovered from him. The document Annexure – A/4, *prima facie*, shows that the vehicle has been sold to one of the arrested accused way back on 20-8-2019; and moreover there is no material even in form of memorandum statement of the co-accused that the illicit liquor belongs to the present applicant. Thus, the ingredients of offence under Section 34 (2) are missing against the present applicant.

12. Considering the entire facts situation of the case, this Court is inclined to release the applicant on anticipatory bail.
13. Accordingly, the application is allowed and it is directed that in the event of arrest of the applicant, he shall be released on anticipatory bail on his executing a personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one surety in the like sum to the satisfaction of the arresting officer with the following conditions:-
- he shall make himself available for interrogation by a police officer as and when required;
 - he 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 from disclosing such facts to the Court or to any police officer.
 - he shall not influence the witnesses during pendency of the trial.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri