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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 913 OF 2020

SHATRAGUN S/O NAVNATH KIRDAK
VS
THE STATE OF MAHARASHTRA

Mr.PB Rakhunde, Advocate For Applicant;
Mr.AM Phule,APP for State

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 15th October, 2020.

PER COURT:-

1. The applicant is apprehending his arrest in connection with CR No.623/2019 dated 18.12.2019 registered with State Excise Flying Squad, Maharashtra State, Mumbai for the offence punishable under Section 65(A)(E), 81, 83, 90 and 108 of the Maharashtra Prohibition Act.

2. Heard Shri PB Rakhunde, learned Advocate for applicant and Shri AM Phule, learned APP for Respondent-State.

3. It has been vehemently submitted on behalf of the applicant that co-accused – Vijay Kadam and Dinesh Kolangde were arrested by the Investigating agency and they have been released on

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regular bail by learned JMFC, Kaij on 19.12.2019. Name of the present applicant is disclosed by the co-accused persons and, therefore, that statement cannot have an evidentiary value. Now, nothing is required to be seized from the applicant as the co-accused persons were arrested with material worth Rs.4,79,800/-. There is no connection to the said crime and the accused and, therefore, the applicant deserves to be released on anticipatory bail. It is also submitted that the vehicle number, which is reflected in the FIR, does not belong to the applicant and even on that count also, for the purpose of seizure of the vehicle, his custody is not required.

4. Per contra, learned APP strongly opposed the application by saying that on the basis of secret information, the Excise Department had intercepted the vehicle, from which illegal transportation of liquor was made. Further, the house of the accused No.1-Vijay was also raided, from which additional material worth Rs. 14,13,072/- was seized. When the Investigating Officer tried to catch the applicant, he fled away.

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Possibility of such illegal stock of liquor is not ruled out, thereby the State exchequer is put to loss. Therefore, thorough investigation is required and for that purpose, physical custody of the applicant is necessary. Though the matter is coming up for the first time; yet from the papers those have been produced by the applicant itself, this fact can be revealed and he submitted that the papers are awaited.

5. It is to be noted that as per the wording of Section 438 of Cr.P.C., this Court should either grant ad interim bail on the basis of the case made out or reject the application. That means it has to be rejected in its entirety even if no case is made out for grant of ad interim bail. Perusal of the FIR would show that after the secret information was received, raid was conducted. Two persons, viz. Vijay Kadam and Dinesh Kolangade, were found in TATA SUMO GOLD jeep. Search of the vehicle revealed the illegal stock of liquor. They were not possessing any document regarding payment of excise duty. Muddemal worth Rs.4,79,800/- was seized from that place and thereafter house of

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accused No.1, which was in front of the place where the vehicle was parked, was searched. It revealed further stock of liquor which was meant for only Goa State. It was illegal stock. Muddemal worth Rs.14,13,072/- was seized from that place and then on inquiry, it was told that the said stock was purchased from the present applicant. In presence of the Investigating Officer, accused No.1 had again called to the present applicant and it was told that he wanted to purchase more stock. When the entire team went to the place, as indicated by the present applicant, they found that the vehicle was standing at that place, however, the applicant had fled away. Inspection of the vehicle revealed that it would have been used for concealing large quantity of liquor and when that concealed boxes were opened, it revealed more muddemal worth Rs. 9,34,904/-. Thus, in all, muddemal worth Rs. 28,27,776/- has been recovered. When such huge quantity of liquor stock has been seized, for which there was absolutely no document and none of the accused, including the present applicant, has come with a case that they have paid the excise duty, then definitely custody of the present applicant

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would be required. The nature of the offence is such that possibility of getting it done through somebody else cannot be ruled out. When such offence is ante-social, definitely an opportunity is required to be given to the police machinery to unearth all the aspects involved; the manner in which the transportation was done etc. Hence, no case is made out to grant anticipatory bail to the applicant. The application stands rejected.

(SMT. VIBHA KANKANWADI,J.)

BDV