

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 113 of 2021

- Dinesh Kumar Khande, S/o Juthel Khande, aged about 32 years, R/o Sonbandha, Police Station Takhatpur, District Bilaspur (CG)

---- Applicant

Versus

- State of Chhattisgarh, through the In-charge, Excise Circle, Bilha, District Bilaspur (CG) (wrongly mentioned as Excise Circle Bilaspur)

---- Non-applicant

For Applicant	:	Mr. Varuendra Mishra, Advocate
For Non-applicant	:	Mr. Hariom Rai, Panel Lawyer.

Hon'ble Mr. Justice Parth Prateem Sahu
Order On Board

23/3/2021

1. Heard.
2. This is an application under Section 438 of CrPC for grant of anticipatory bail to the applicant as he apprehends his arrest in connection with Crime No.88/2020 registered at Police Station - Excise Circle, Bilha, District Bilaspur for commission of offence under Sections 34 (1) (क), (च), 34 (2) & 59(A) of the Chhattisgarh Excise Act, 1950.
3. Learned State Counsel submits that in view of specific provisions of Section 59A of the CG Excise Act, 1950, present application for grant of anticipatory bail is not maintainable.
4. Section 59A of the CG Excise Act, 1950 reads as under:-

“59A. Certain offence under the Act to be non-bailable.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (No. 2 of 1974) or Section 59 of the Act, —

(i) no application for an anticipatory bail shall be entertained by any Court in respect of a person accused of an offence punishable under Section 49 -A or in respect of a person not being a person holding a licence under the Act or rules made thereunder who is accused of an offence covered by clause (a) or clause (b) of sub -section (1) of Section 34 with quantity of liquor found at the time or in the course of

detection of such offence exceeding fifty hulk litres.

(ii) a person, accused of an offence punishable under Section 49 -A or a person not being a person holding a licence under the Act or rules made thereunder who is accused of an offence covered by clause (a) or clause (b) of sub -section (1) of Section 34 with quantity of liquor found at the time or in the course of detection of such offence exceeding fifty bulk litres shall not be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release and in case such an application is opposed by the Public Prosecutor, unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail :

Provided that no Court shall order for detention of such person in custody during the course of investigation for total period exceeding 60 days where it relates to an offence covered by clause (a) or clause (b) of sub -section (1) of Section 34 with quantity of liquor found at the time or in the course of detection of the offence under Section 49 - A and on the expiry of such of 60 days or 120 days, as the case may be, and in the event of the report of complaint not being filed the accused shall be released on furnishing bail.

(iii) the limitations for grant of bail specified in clause (ii) are in addition to limitations prescribed under the Code of Criminal Procedure, 1973 (No. 2 of 1974) or any other law for the time being in force regarding grant of bail.”

5. From perusal of above quoted provisions, it is evident that no application for anticipatory bail shall be entertained by any Court in respect of a person, who is accused of an offence covered by clause (a) or (b) of sub-section (1) of Section 34 of the Excise Act. In the present case, it is alleged that 30 liter country made liquor (Mahua) & 800 kilogram Mahua has been seized from the residential accommodation of present applicant, therefore, crime under the Excise Act including the offences punishable under Section 34 (1) (a), (e), 34 (2) & 59A of the Excise Act, is registered against present applicant.
6. Hence, in view of provisions of Section 59A of the Excise Act, the present anticipatory bail application on behalf of applicant is not maintainable and it is accordingly dismissed as not maintainable.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-