

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRCA No. 556 of 2021**

- Kundan Singh @ Vicky Singh S/o Yogendra Singh Aged About 36 Years R/o Deepak Nagar, Durg, P.S. Mohan Nagar, Tehsil And District Durg (C.G.)

---- Petitioner**Versus**

- State Of Chhattisgarh Through S.H. O. P.S. Mohan Nagar, Tehsil And District Durg (C.G.)

---- Respondent

For Applicant	Mr. Avinash Chand Sahu, Advocate
For Respondent /State	Mr. Vikram Sharma, Dy. GA for

Proceedings through Video Conferencing**SB.: Hon'ble Mr. Prashant Kumar Mishra, Ag. CJ**
Order On Board**28/7/2021**

1. Heard.
2. This is an application filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the applicant, who is apprehending his arrest in connection with Crime No.91/2021 registered at Police Station Mohana Nagar, District Durg for the offence punishable under Section 34(2) of the Chhattisgarh Excise Act, 1915 (in short "the Excise Act").
3. Co-accused Tarun Tiwari @ Bablu was found in illicit possession of 93 bulk litres of foreign made liquor during search of a Swift

Desire Car, in which, he was illicitly transporting the contraband. As per the memorandum statement of Tarun Tiwari @ Bablu, the illicit liquor was transported on behalf of the present applicant.

4. It is argued that the applicant was neither present at the place of the incident nor he is the owner of the vehicle, therefore, considering that statement of the co-accused may not be admissible against the applicant and there is no other admissible evidence against him, he is entitled to be released on anticipatory bail.
5. Learned counsel for the State would object to the application by referring to Section 59-A (ii) of the Excise Act, wherein, there is bar for grant of anticipatory bail to a person, who is accused of committing offence under the Excise Act.
6. True it is that the provisions contained in Section 59 of the Excise Act restricts the power of this Court to enlarge the accused on anticipatory bail, however, at the same time, it is to be seen that when the material available in the case diary does not demonstrate involvement of the accused, *prima facie*, the power under Section 438 of Cr.P.C. can be exercised.
7. In the case at hand, the applicant was not present at the place of occurrence nor he is the owner of the vehicle, in which, the illicit liquor was transported. The only evidence against the applicant is the memorandum statement of the main accused Tarun Tiwari @ Bablu.

8. Considering the admissibility of the statement made by one accused against another accused, I am inclined to extend the benefit of Section 438 of Cr.P.C. to the applicant.
9. 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 furnishing a personal bond for a sum of Rs.50,000/- with one surety in the like sum to the satisfaction of the Arresting Officer with the following conditions :-
- (i) he shall make himself available for interrogation by a Police Officer as and when required;
 - (ii) 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 for disclosing such facts to the Court or to any Police Officer.
 - (iii) he shall not influence the witnesses during pendency of the trial.

Certified copy as per rules.

Sd/-

(Prashant Kumar Mishra)

Acting Chief Justice