

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1026 of 2021**

Vijay Prakash S/o Late Rambriksh Rai, Aged About 43 Years
R/o Shanti Nagar, Supela, Police Station - Supela, District -
Durg Chhattisgarh

---- Applicant**Versus**

State of Chhattisgarh Through The Station House Officer,
Police Station - Kumhari, District - Durg Chhattisgarh

---- Non-applicant

For Applicant : Shri B.P. Singh, Advocate

For Non-applicant/State : Ms. Anjali Singh Chauhan, Panel Lawyer

(Proceedings through Video Conferencing)**Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****03.09.2021**

1. The applicant has preferred this first bail application under Section 438 of the Cr.P.C. for grant of anticipatory bail, as he is apprehending his arrest in connection with Crime No.187 of 2021, registered at Police Station Kumhari, District Durg (C.G.), for offence punishable under Section 34(2) of Chhattisgarh Excise Act.
2. Case of the prosecution in brief, is that, on 05.08.2021, when Police was on patrolling duty, they received secret information that some persons are indulged in selling of illicit liquor in abundant factory. On the basis of secret information, Police reached the spot and found Karan Kumar Singh and Shiv Rao present. From their possession, recovered 5 cartoons from each of super speed whiskey. Based on seizure of illicit liquor from possession of Karan

Kumar Singh and Shiv Rao, crime was registered against them. During the course of investigation, based on the memorandum statement of accused persons, applicant has been also implicated in the crime.

3. Shri B.P. Singh, learned counsel for the applicant would submit that applicant has placed on record copy of First Information Report as Annexure A/2 wherein Police upon raid of abundant factory, found two persons with illicit liquor. In First Information Report, there is no mention of presence of any other person on the spot. Name of present applicant has come only in the memorandum statement recorded by the Police of the persons arrested from the spot with illicit liquor. Applicant has been falsely implicated in the case and as the applicant was not found in possession of illicit liquor, no offence as alleged under Section 34(2) of Chhattisgarh Excise Act would be made out against the applicant.
4. Per contra, Ms. Anjali Singh Chauhan, learned Panel Lawyer representing the State opposing the submissions made by learned counsel for the applicant, would submit that offence alleged against the applicant is under Section 34(2) of Chhattisgarh Excise Act and as such, application for grant of anticipatory bail would not be maintainable in view of provisions of Section 59A(i) of Chhattisgarh Excise Act. She further submits that name of applicant has been stated by co-accused persons in their memorandum statement.
5. I have heard learned counsel for the parties.

6. So far as the bar under Section 59A(i) of Chhattisgarh Excise Act for entertaining anticipatory bail application for the offence under Section 34(2) of Chhattisgarh Excise Act is concerned, perusal of First Information Report registered by the Police bearing No.10187 of 2021 would show that Police from the spot has arrested two persons by name, Karan Kumar Singh and Shiv Rao and from their possession, illicit liquor was seized. Seizure was made from the abundant factory premises and not from accommodation/premises owned by the applicant. There may be chances of false implication, hence bar under Section 59A(i) of Chhattisgarh Excise Act would not be attracted in the facts of the case.
7. Taking into consideration entire facts and circumstances of the case, nature of allegations, applicant was not found present on the spot at the time when the Police raided the abundant factory premises and there was no seizure of liquor from his premises, without commenting anything into the merits of the case, I am inclined to release the present applicant on anticipatory bail.
8. Accordingly, bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on anticipatory bail on his furnishing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like sum to the satisfaction of the arresting officer and he shall abide by 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 from 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/-

(Parth Prateem Sahu)
Judge