

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MCRC (A) No. 1041 of 2021

Gyan Prasad Rajwade S/o Late Vikram Rajwade, Aged About 40 Years,
 R/o Village Parsa, Police Station and Tehsil -Udaipur, District -Sarguja,
 Chhattisgarh.

----Applicant

Versus

State of Chhattisgarh Through Station House Officer, Police Station
 -Udaipur, District -Sarguja, Chhattisgarh.

--- Respondent

For Applicant	: Mr. Shakti Raj Sinha, Advocate.
For Respondent-State	: Mr. Vimlesh Bajpai, GA.

(Proceedings through video conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

27/08/2021

Heard.

1. Applicant has filed this bail application under Section 438 of Cr.P.C. apprehending his arrest in connection with Crime No.101/2021 registered at Police Station -Udaipur, District -Sarguja, (CG), for the offence punishable under Section 34(2) of Chhattisgarh Excise Act, 2015. (for short, 'CG. Excise Act').
2. Case of the prosecution, in brief, is that on 27.07.2021, while the Police staff was on patrolling duty, they received information from informer that applicant has illegally kept liquor in excessive quantity in his house for sale. On this, the Police party raided house of applicant and seized 6.210 bulk litre of foreign liquor from his house. Applicant managed to flee from the spot.
3. Learned counsel for the applicant submits that High Court of Madhya Pradesh had an occasion to consider challenge of virus of Section 59(A) (i) of CG Excise Act, while holding the provisions to be intra-virus has held that there cannot be absolute bar and the High Court can consider application for grant of anticipatory bail in exceptional cases. By referring

to the judgment passed by this Court in case of **Lakhan Sahu vs. State of Chhattisgarh** reported in **2007 (1) C.G.L.J. 8**, learned counsel submits that the Court while considering application for grant of anticipatory bail in respect of offence registered under Section 34(2) against applicant therein has allowed anticipatory bail application. He also submits that in case at hand, alleged seizure of liquor was not from inside the house of applicant, but from open place ie verandah (parchi), hence, anticipatory bail application is maintainable.

4. Learned State Counsel opposes the submissions made by learned counsel for applicant and submits that application for grant of anticipatory bail is not maintainable in view of specific bar under Section 59(A)(i) of CG Excise Act, and the learned Court below has also rejected application for grant of anticipatory bail on this very ground. The liquor was seized from inside the house of applicant, who fled away upon seeing the police.
5. Heard learned counsel for the parties.
6. Proviso to Section 59(A)(i) of the CG. Excise Act reads as under :---

“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 subsection (1) of Section 34 with quantity of liquor found at the time or in the course of detection of such offence exceeding [five bulk litre].

7. Relevant portion of Section 34 is also extracted below for ready reference

:-

“(a).Manufactures, transports, imports, exports, collects or possesses any intoxicant; or
(b).Save in the cases provided for in Section 38, sells any intoxicant; or”

8. In case at hand undisputably liquor has allegedly been seized from house of applicant. From contents of impugned order it is apparent that when the Police reached in village for raiding house of applicant, he managed to flee from back door of his house.
9. In case of **Lakhan Sahu** (supra), facts of the case were that the liquor was seized from house of co-accused and not from house of applicant therein. Applicant could not able to point out that case of applicant is of false implication.
10. Considering the entire facts and circumstances of case, nature of allegations, the fact that liquor has been alleged to be seized from house of applicant, I am of the view that this application for grant of anticipatory bail is not maintainable in view of specific bar under Section 59(A)(i) of the C.G. Excise At.
11. Accordingly, anticipatory bail application is dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-