

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1215 of 2021**

- Bablu S/o Shyam Lal Chorage Aged About 45 Years Occupation Cultivator, Resident Of Village Nawapara Ward No. 14, Police Station, Tahsil Sarangarh, District Raigarh (Chhattisgarh)

---- Applicant**Versus**

- State Of Chhattisgarh Through- Station House Officer, Police Station Sarangarh, Civil And Revenue District Raigarh (Chhattisgarh)

---- Respondent

For Applicant	: Shri UR Khoshley, Advocate
For Respondent/State	: Shri BL Sahu, PL

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**29.09.2021**

1. 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. 393 of 2021 registered at Police Station Sarangarh, District- Raigarh, Chhattisgarh for commission of offenses punishable under Sections 34(2), 59(A) of Chhattisgarh Excise Act.
2. Case of the prosecution, in brief, is that, on 10.02.2021 based on secret information, Police made raid in Tipa forest. Upon looking to the Police, two persons started running away from the spot. One Budhnath was arrested. Police on the spot seized 560 bulk litres handmade liquor and other utensils, used for making liquor. Based on memorandum statement of Budhnath, one Kunaru @ Haricharan Ratrey and present applicant have been arrayed as accused persons.
3. Applicant, apprehending his arrest, filed this anticipatory bail application after rejection of his application by the Court below.
4. Shri UR Khoshley, learned counsel for the applicant would submit that application for anticipatory bail has been rejected by the Court below recording a finding that it is

not maintainable in view of Section 59(A) of the Chhattisgarh Excise Act. He submits that applicant at the time of raid, was not present there. Applicant was in hospital for treatment of his wife who was in-patient, the place from where alleged liquor was seized is open place. Hence, the Bar for considering anticipatory bail under Section 59(A) would not be attracted. He submits that applicant has submitted medical admission ticket of RSM Hospital, Raigarh, which shows that he was in hospital from 08.07.2021 10 am till 16.07.2021 5.30 pm for treatment of his wife. He submits that applicant name has come in memorandum statement of co-accused, as applicant is not *prima facie* involved in the incident, he may be enlarged on anticipatory bail.

5. On the other hand, Shri BL Sahu, learned counsel for the State opposing the submissions of learned counsel for the applicant submits that when Police made raid in Tipa forest, they found two persons on the spot in possession of liquor. Upon looking the Police persons, both of them tried to fled away, out of which Budhnath was arrested from the spot and 560 bulk litres handmade liquor was recovered form his possession. He read over memorandum statement of co-accused Budhnath and submits that in his statement it has come that applicant was also engaged in manufacturing of handmade liquor but on the date of incident/raid, he was not present on the spot and applicant was at the hospital.

6. I have heard learned counsel for the parties.

7. There is bar under Section 59(A) of the Chhattisgarh Excise Act, but that is not absolute. In exceptional circumstances, High Court can consider application for grant of anticipatory bail where the defence taken is of false implication considering the facts and circumstances of the case.

8. Taking into consideration nature of allegations levelled against applicant; and the fact that applicant was stated to be not present on the spot, place from where handmade liquor was seized by Police, is an open place in forest, and as stated applicant is at RSM Hospital, Raigarh from 08.07.2021 to 16.07.2021, without commenting anything on merits of case, I am inclined to grant anticipatory bail to the applicant.

9. Accordingly, the application is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question, he shall be released on anticipatory bail by the Officer arresting him on his executing a personal bond in the sum of Rs.25,000/- (Rupees twenty-five thousand) with one surety in the like sum to the satisfaction of the concerned Arresting Officer. The applicant shall also abide by the following conditions:

- a) That the applicant shall make him/her available for interrogation before the Investigating Officer as and when required;
- b) That the applicant 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/her from disclosing such facts to the Court or to any Police Officer;
- c) That the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- d) That the applicant shall appear before the trial Court on each and every date given to him/her by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
JUDGE