

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 1st OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 3894 of 2024

BETWEEN:-

**NAWAB KHAN S/O SHRI MOHAMMAND ALI, AGE 30
YEARS, OCCUPATION: LABOUR RESIDENT OF KAJI
PATHA MOHALLA, BHANDER DISTRICT DATIA
(MADHYA PRADESH)**

.....APPLICANT

(SHRI SHAILESH SINGH KAURAV- ADVOCATE FOR APPLICANT)

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION BHANDER DISTRICT DATIA (MADHYA
PRADESH)**

.....RESPONDENT

***(SHRI P.P.S. VAJEETA- PUBLIC PROSECUTOR FOR RESPONDENT-
STATE)***

.....
*This application coming on for hearing this day, the court passed the
following:*

ORDER

This **first** bail application has been filed by applicant under section 439 of the Code of Criminal Procedure, 1973 for grant of bail in connection with Crime No. 297 of 2023 registered at PS Bhandar, District Datia (M.P.) for offence punishable under section 34(2) of M.P. Excise Act. Applicant is in judicial custody since 17-1-2024.

As per the case of prosecution, on 31-08-2023, on receipt of secret information, Sub-Inspector of Police, PS Bhandar along with police force reached near Shahpur Road, Bhandar and intercepted the applicant and from

his possession, 63 bulk liters of illicit country-made plain liquor was recovered. On such allegations, FIR at Crime No. 297 of 2023 was registered at PS Bhandar, District Datia (M.P.) for offence punishable under section 34(2) of M.P. Excise Act against applicant. He is in custody ever since. Relevant seizure has been made. Statements of witnesses have been recorded. Applicant was arrested on 17-01-2024, he is in custody ever since. After completion of investigation, Final Report was filed on 17-01-2023.

Learned counsel for the applicant, in addition to the grounds mentioned in the application, submits that the applicant has falsely been implicated in the matter. The applicant is aged 30 years and labour by profession. He is permanent resident of District Datia. He is sole bread earner in the family and there is no likelihood of his absconsion leaving his family and property. There is no likelihood of tampering with the evidence by applicant. Alleged offence is triable by Judicial Magistrate First Class. The trial would take time to complete. Therefore, the applicant may be extended the benefit of bail.

Per contra, learned counsel for the respondent/State opposes the bail application on the gravity of alleged offence and cites criminal history of 17 cases against the applicant.

In reply, learned Counsel for the applicant submits that applicant has been acquitted in 15 criminal cases. One case for offence under Section 34(2) of MP Excise Act in connection with Crime No. 135 of 2021 PS Bhandar, District Datia is pending for trial wherein applicant has been extended the benefit of bail. Another matter in connection with Crime No.232 of 2008 for offence under Section 25B of Arms Act is not traceable. Applicant has never been convicted.

Heard learned counsel for the parties and perused the case diary.

Considering the arguments advanced by both the parties and overall circumstances of the case but without commenting on merits of the case, this Court is inclined to release the applicant on bail. Thus, the application is allowed.

Accordingly, it is directed that applicant **Nawab Khan** shall be released on bail in connection with Crime No. 297 of 2023 registered at PS Bhandar, District Datia (M.P.) for offence punishable under section 34(2) of M.P. Excise Act upon furnishing a personal bond in the sum of **Rs. 50,000/- (Rs. Fifty Thousand Only)** with one solvent surety of the same amount to the satisfaction of the Trial Court, for compliance with the following conditions, : (For the sake of convenience of understanding by accused and surety, the conditions of bail are also reproduced in Hindi as under):-

(1) Applicant shall remain present on every date of hearing as may he directed by the concerned court;

(1) आवेदक संबंधित न्यायालय के निर्देशानुसार सुनवाई की प्रत्येक तिथि पर उपस्थित रहेगा।

(2) Applicant shall not commit or get involved in any offence of similar nature;

(2) आवेदक समान प्रकृति का कोई अपराध नहीं करेगा या उसमें सम्मिलित नहीं होगा।

(3) 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 them/him/her from disclosing such facts to the Court or to the police officer;

(3) आवेदक प्रकरण के तथ्यों से परिचित किसी व्यक्ति को प्रत्यक्ष या अप्रत्यक्ष रूप से प्रलोभन, धमकी या वचन नहीं देगा, जिससे ऐसा व्यक्ति ऐसे तथ्यों को न्यायालय या पुलिस अधिकारी

को प्रकट करने से निवारित हो।

(4) Applicant shall not directly or indirectly attempt to tamper with the evidence or allure, pressurize or threaten the witness;

(4) आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से साक्ष्य के साथ छेड़छाड़ करने का या साक्षी या साक्षियों को बहलाने—फुसलाने, दबाव डालने या धमकाने का प्रयास नहीं करेगा।

(5) During trial, the applicant shall ensure due compliance of provisions of Section 309 of Cr.P.C. regarding examination of witnesses in attendance;

(5) विचारण के दौरान, उपस्थित गवाहों से परीक्षण के संबंध में आवेदक धारा 309 दं.प्र.सं. के प्रावधानों का उचित अनुपालन सुनिश्चित करेगा।

This order shall be effective till the end of trial. However, in case of breach of any of the precondition of bail, the Trial Court may consider on merit cancellation of bail without any impediment of this order.

The trial Court shall get these conditions reproduced on the personal bond by the accused and on surety bond by the surety concerned. If any of them is unable to write, the scribe shall certify that he had explained the conditions to the concerned accused or the surety.

C.C. as per rules.

(SANJEEV S KALGAONKAR)
JUDGE

MKB