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

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 8th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 57496 of 2023

BETWEEN:-

**ASHOK SINGH S/O SHRI BADAM SINGH GUDEN, AGED
ABOUT 47 YEARS, SADHO KI BAGIA WARD NO 14
KASWA KARERA POLICE STATION KARERA DISTRICT
SHIVPURI (MADHYA PRADESH)**

.....APPLICANT

(SHRI SOORAJ BHAN LODHI - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH TOWN
INSPECTOR POLICE STATION KARERA DISTRICT
SHIVPURI (MADHYA PRADESH)**

.....RESPONDENT

(SHRI LOKENDRA SHRIVASTAVA - PUBLIC PROSECUTOR)

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

ORDER

Learned counsel for the applicant requests that although entire body of the application relates to bail under Section 439 of CrPC, but inadvertently the title mentions Section 438 of CrPC, therefore, the application may be considered under Section 439 of CrPC.

Perused the application. Mistake appears to be *bona fide*, therefore, prayer accepted. The application would be dealt with under Section 439 of CrPC.

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.632 of 2023 registered at Police Station Karera, District- Shivpuri (M.P.) for offence punishable under Section 34 (2) of M.P. Excise Act.

As per the case of prosecution, ASI Praveen Trivedi intercepted one motorcycle near Galla Mandi on 10.09.2023. The pillion rider fled away taking benefit of darkness. Accused Mangal Barar was found transporting 80 bulk litres of countrymade raw liquor in two jerrycans tied with the motorcycle. Accordingly, illicit liquor was seized from possession of Mangal Barar. Statement of co-accused Mangal Barar was recorded under Section 27 of the Evidence Act. He informed that Ashok Kanjar (applicant) was riding the motorcycle along with him, therefore, offence punishable under Section 34(2) of M.P. Excise Act was registered at Crime No.632/2023 PS - Karera, Shivpuri against Mangal Barar and Ashok Kanjar. On completion of investigation, Final Report has been submitted on 19.12.2023.

Learned Counsel for the applicant, in addition to the grounds mentioned in the application, submits that the applicant has been falsely implicated in the matter merely on the suspicion and the statement of co-accused given in police custody. Applicant has surrendered before the Trial Court and the Trial Court took him in judicial custody. His application under Section 439 of CrPC was rejected *vide* order dated 28.12.2023. He is in custody ever since. No incriminating article is seized from the possession of the applicant. Applicant is aged 47 years. He is a labourer by profession. He is sole bread earned of the family, therefore, there is no likelihood of his absconsion leaving his family or home. No further custodial interrogation of applicant is needed. There is no likelihood of tampering with the evidence. Jail incarceration is causing hardship to the applicant and his family. The trial would take time to complete.

Therefore, the applicant may be extended the benefit of bail.

Per contra, learned counsel for State opposes the bail application citing criminal history of 14 cases against the applicant out of which seven cases relate to offence punishable under Section 34(2) of M.P. Excise Act.

In reply, learned counsel for the applicant submits that ten cases are pending for trial. Applicant has been released on bail in all other matters. Applicant has been acquitted in four matters. He has never been convicted in any of the matter. Further, no offence is made out against the applicant in this case.

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 Ashok Singh** shall be released on bail in relation to Crime No.632 of 2023 registered at Police Station Karera District Shivpuri (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 temper 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.

Vijay

