

1
**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. 58115 of 2023

BETWEEN:-

**RAJKUMAR KANJAR S/O SHRI RAJENDRA@SITARAM
KANJAR, AGED ABOUT 38 YEARS, RESIDENT OF
RAJPURA POLICE THANA RAGHOGARH DISTRICT
GUNA (MADHYA PRADESH)**

.....APPLICANT

(SHRI BRIJENDRA SINGH GOUR -ADVOCATE FOR THE APPLICANT)

AND

**THE STATE OF MADHYA PRADESH INCHARGE POLICE
STATION THROUGH POLICE STATION RAGHOGARH
DISTRICT GUNA (MADHYA PRADESH)**

.....RESPONDENT

***(SHRI RAJENDRA SINGH YADAV - PUBLIC PROSECUTOR FOR THE
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.171/2022 registered at Police Station Raghogarh, District Guna (M.P.) for offence punishable under Sections 34(2) and 49(A) of M.P. Excise Act. The applicant is in judicial custody since 18-12-2023.

As per the case of prosecution, SI Brajmohan Rawat of outpost Janjaali, Police Station Raghogarh, District Guna, on secret information, conducted raid at village Rajpura on 23/04/2022. As the police force reached near village

Rajpura, applicant -Rajkumar Kanjar fled away leaving plastic drum and plastic cane. Country made raw liquor was found in the plastic drum. Total quantity i.e. 115 bulk litres country made raw liquor was seized. Police Station Raghogarh, District Guna registered FIR at Crime No. 171/2022 for the offence punishable under Sections 34(2) of the M.P. Excise Act against the applicant. Applicant cooperated in the investigation in compliance with notice under Section 41-A of the Cr.P.C. On completion of investigation, final report was submitted on 21/10/2022. Applicant surrendered before the Trial Court. He was taken into custody. His application under Section 439 of the Cr.P.C was rejected vide order dated 20/12/2023 by the Trial Court. FSL report dated 22/09/2022 opines that 34.44% of ethyl alcohol alongwith furfural and sediment was found in the sample of seized alcohol, therefore, it was found to be unfit for human consumption. Accordingly, prosecution for the offence punishable under Section 49-A of the M.P. Excise Act added. Applicant was arrested on 18/12/2023, he is in custody ever since.

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 basis of suspicion. No incriminating article has been recovered from conscious possession of applicant, therefore, no offence punishable under Sections 34(2) and 49(A) of the M.P. Excise is made out against the applicant. No poisonous or life threatening injurious substance was found in the seized liquor. Learned Counsel further submits that applicant is aged 38 years and is a labourer by profession. He is sole bread earner in the family. There is no likelihood of his absconsion leaving family and home. Final report has been filed, therefore, there is no likelihood of his 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 bail application on the ground of gravity of alleged offence.

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- RAJKUMAR KANJAR** shall be released on bail in relation to Crime No.171/2022 registered at Police Station Raghogarh, District Guna (M.P.) for offence punishable under Sections 34(2) and 49(A) of M.P. Excise Act, upon furnishing a personal bond in the sum of **Rs. 50,000/- (Rupees 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 be 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 applicants 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

Prachi

