

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
M.Cr.C No.5303/2020

Balram @ Ballu Vs. State of MP

Indore Dated:-03/07/2020

Shri Manish Yadav, learned counsel for the petitioner.

Shri RK Shastri, learned panel lawyer for the respondent/State.

This is the first application under section 439 of the Cr.P.C in crime no.03/2020 under section 34(2) of the Excise Act registered at police station Agar District Agar Malwa.

2. According to the prosecution case, Sub-inspector Nisha Mawai of police station Agar Kotwali received an information on 01.01.2020 that Balram (petitioner) along with one person will pass through Badodiya Road on a motor cycle and that they are carrying illicit liquor. Acting on this information, the police laid a trap at the place pointed out by the informer i.e. *Khal* of Badodiya Road. After sometime, they noticed motorcycle coming from Badodiya end. The police stopped it by throwing torch light and saw that the petitioner Balram was driving the same. A person was sitting on the back seat with a jute bag kept between both of them. On seeing the police, both the petitioner and his companion ran away leaving behind the motorcycle along with the jute bag being carried by them. On search, 63 bulk liters country made liquor was found in the bag which was seized and a case was registered. During the investigation, one Dhirap S/o Siddu Singh was found registered owner of the motorcycle. The police called him and interrogated. He revealed that he had sold this motorcycle five years back to the petitioner. He also executed a notarized affidavit stating the same facts. Therefore, the police arrested the present petitioner.

3. The bail is pleaded on the ground that neither the petitioner was found on the spot nor motorcycle belongs to him. There is no evidence except the affidavit of registered owner of the motorcycle that the petitioner owns or possess the seized motorcycle. The affidavit is executed by Dhirap after seven days of the incident and after three days

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of arrest of the petitioner, therefore, it cannot be relied upon. This shows that the petitioner is being falsely implicated to screen the real offender/registered owner of the motorcycle Dhirap.

4. The objection of the learned panel lawyer is that the registered owner of the motorcycle has executed the affidavit stating that he had sold the motorcycle five years back to the petitioner. Besides, the petitioner has following criminal record:-

S.No	Crime no.	Under section
1	421/2014	34 Excise Act
2	481/2016	34(2) Excise Act
3	638/2017	34 Excise Act
4	29/2018	34 Excise Act

5. It is further submitted by the learned panel lawyer that the petitioner was named in the information received by the police. Seizing officer Nisha Mawai has named him in her police statement. The petitioner is a habitual offender. He has repeated the similar crime several times, therefore, in view of the bar created under section 59-A of the Excise Act, he is not entitled for bail.

6. Having heard the learned counsels for the parties at length and keeping in view their contentions, I am not inclined to grant bail to the petitioner, therefore, the petition stands dismissed.

(Virender Singh)
Judge

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