

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 21st OF JULY, 2022

MISC. CRIMINAL CASE No. 35360 of 2022

Between:-

**RAHUL KEWAT S/O SHRI BHGWANSINGH
KEWAT , AGED ABOUT 25 YEARS,
OCCUPATION: LABOUR GRAM KESUR,
TEHSIL DHAR (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI ASHISH GUPTA, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
SADALPUR (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI BHUWAN DESHMUKH, G.A.)

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

ORDER

They are heard. Perused the case-diary.

2. This is the **first** bail application filed by applicant under Section 439 of Criminal Procedure Code, 1973 as he is implicated in connection with Crime No.492/2021 registered at Police Station –

Sadalpur, District - Dhar (MP) for offence punishable under Sections 34(2) of M.P. Excise Act. The applicant is in custody since 25.05.2022.

3. The allegation against the applicant is that on a secret information received by the police on 26.01.2021, an Alto Car bearing registration No.MP-09-WG-7431 was stopped on Kesur Khareli Road, Dhar. However, soon after seeing the police, the persons sitting in the car fled from the spot but they were identified in the torch light and in the car's head light as the present applicant Rahul Kewat and Chintu alias Gajendra Chouhan, and upon checking the vehicle, it was found to be contained 90 bulk litres of unauthorized liquor.

4. Counsel for the applicant has submitted that the charge-sheet in the present case has already been filed and the applicant is lodged in jail since 25.05.2022. It is further submitted that so far as the other criminal cases registered against the applicant are concerned, in one case registered under Sections 279 of IPC for rash driving, in criminal case No.208 of 2018 he has been acquitted vide judgment dated 02.08.2018. The other case registered under Sections 294, 323, 506 Part -II and 190 of IPC has also resulted in acquittal in RCT No.2535 of 2021 dated 28.12.2021. It is submitted that the final conclusion of trial is likely to take sufficient long time, hence, the applicant be released on bail.

5. Counsel for the applicant has also strenuously argued that as there is a total disregard to the provisions of Section 41A of the Cr.P.C. as the petitioner was never noticed before his arrest, he is

entitled to be released on bail as has also been held by the Hon'ble Supreme Court in a recent decision in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.** passed in **Miscellaneous Application No.1849 of 2021 and other connected matters** and in para 73 of the same the Supreme Court has categorically held that the Courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

6. Counsel for the respondent/State, on the other hand, has opposed the prayer and it is submitted that no case for grant of bail is made out as against the applicant as many as 4 cases have been registered including another case under Section 34 (2) of M.P. Excise Act and thus, while on bail in the aforesaid case, the applicant has again committed this offence under Section 34 (2) of M.P. Excise Act and has run away from the spot, but his car has been seized which was not a random check of vehicles, in fact a secret information was received by the police that the present applicant Rahul Kewat along with Chintu alias Gajendra are travelling in an Alto Car along with illegal liquor and in the FIR itself it is clearly mentioned that soon after the applicant and the other co-accused alighted from the car, they were identified by the witnesses present on the spot.

7. Counsel has also referred to the statement of eyewitness Savan S/o. Jeevan Pindare, who has identified the applicant on the spot itself. It is further submitted that not only the applicant was identified on the spot, but in fact the Alto Car bearing registration No.MP-09-WG-7431

also belongs to the present applicant only as per its registration card and Insurance, and thus, no case for grant of bail is made out. Thus, it is submitted that the aforesaid decision of Supreme Court would not be applicable in the present facts and circumstances of the case. Counsel for the State has also submitted that the applicant has absconded for around six months and has been arrested after much efforts by the police.

8. Heard counsel for the parties and perused the record.

9. The facts of the case are not disputed, especially that the vehicle, from which the unauthorized liquor has been seized, belongs to the present applicant only. In the charge-sheet there is ample evidence available on record that the applicant was carrying 90 bulk litres the illegal liquor and who ran away from the spot no sooner the car was stopped by the police.

10. So far as the applicability of the Section 41A of the Cr.P.C. is concerned, it clearly provides that the police officer shall in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice. Thus, it is apparent that this Section 41A would be applicable only in cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41.

11. Section 41 refers to a situation when police may arrest without warrant and provides that any police officer may, without an order from a Magistrate and without a warrant, arrest any person who commits, in the presence of a police officer, a cognizable offence. In the present case the applicant ran away from the spot in the presence of the police officers while traveling in a car transporting illegal liquor. In such circumstances, it cannot be expected that the police would send a notice under Section **41A** in a platter to the accused to appear before them for further investigation. Sub-clause (ii) of Section 41(1) also provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person if he is satisfied that such arrest is necessary to prevent such person from committing any further offence or for proper investigation of the offence etc.

12. In the present case, admittedly, the applicant is a history sheeter and already has a case under Section 34(2) of M.P. Excise Act to his credit. In such circumstances, even when the provisions of Section 59-A (ii) of M.P. Excise Act lay down that a person, who is involved in a cases relating to an offence exceeding fifty bulk liters shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release and in case such an application is opposed by the Public Prosecutor, unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail, this court is unable to arrive at the satisfaction that the applicant is not guilty of such offence and that he

is not likely to commit any offence while on bail, as already observed above, in the present case the applicant not only fled from the spot, but even the vehicle registered in his own name has been seized from the spot having 90 bulk litres illicit liquor. This is coupled with the fact that on earlier occasion also a case under Section 34(2) of M.P. Excise Act has also been registered against him. In such circumstances, the decision rendered by the Hon'ble Supreme Court in the case of *Satender Kumar Antil (supra)* has no application and is of no avail to the applicant.

13. Accordingly, the application being devoid of merits, is hereby **dismissed**.

Certified copy as per rules.

(SUBODH ABHYANKAR)
JUDGE

Pankaj