

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 13th OF OCTOBER, 2023

MISC. CRIMINAL CASE No. 45210 of 2023

BETWEEN:-

**KRISHNA PAL SINGH S/O MANGU SINGH JI, AGED
ABOUT 32 YEARS, OCCUPATION: LABOUR GRAM
CHALDU, TEHSIL JEERAN, DIST. NEEMUCH (MADHYA
PRADESH)**

.....APPLICANT

(DR. KHUZEMA KAPADIA, LEARNED COUNSEL FOR THE PETITIONER).

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION RINGNOD,
RATLAM (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI ANAND BHATT APPEARING ON BEHALF OF ADVOCATE
GENERAL).***

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

ORDER

1.This is the first anticipatory bail application filed under Section 438 of the Code of Criminal Procedure, 1973. The applicant is apprehending his arrest in connection with Crime No.304/2022, registered at P.S. -Ringnod, District Ratlam (M.P.) for commission of offence punishable under Section34(2) of Excise Act.

2 As per prosecution story, 60 bulk liters of illicit liquor is said to be seized from the possession of the applicant.

3.Learned counsel for the applicant submits that the applicant is innocent

and he has been falsely implicated in this matter. The applicant has been made accused only on the basis of memorandum statements of co-accused. The applicant is having no criminal record. Final conclusion of trial will take considerable long time. Hence, he prays that the applicant be released on anticipatory bail.

4.Per-contra, learned counsel for the State has opposed the prayer by submitting that the custodial interrogation of applicant is necessary. hence, the applicant may not be released on anticipatory bail.

5.Heard learned counsel for both the parties and perused the record.

6.So far as, the fact that the applicant has been made accused only on the basis of Section 27 of Evidence Act is concerned, the view of Hon'ble Apex Court is worth referable here. The Hon'ble Apex court by order dated 20/7/2022, passed in Criminal appeal No. 1005 of 2022 in the matter of The State of Haryana Vs. Samarth Kumar has held as under:-

*“8. In cases of this nature, the respondents may be able to take advantage of the decision in **Tofan Singh Vs. State of Tamil Nadu reported in 2021(4) SCC 1**, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.*

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High court fell into an error in granting anticipatory bail to the respondents.”

7.The Hon'ble Apex court in the case of Samarth Kumar (supra) had set aside the order of High court whereby the High court granted pre arrest bail to the accused only on the ground that no recovery was effected from the

respondents and that they had been implicated only on the basis of the disclosure statement of the main accused.

8. On this aspect, the provisions of Section 59-A of M.P. Excise Act, 1915 is also worth referable here as under:-

"59-A. **Certain offence under the Act to be non- bailable.-** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (No. 2 of 1974) or Section 59 of the Act,

(i) no application for an anticipatory bail shall be entertained by any court in respect of a person accused of an offence punishable under Section 49-A or in respect of a person not being a person holding a licence under the Act or rules made thereunder who is accused of an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 with quantity of liquor found at the time or in the course of detection of such offence exceeding fifty bulk-litres."

9. This Court, while deciding the application filed under Section 438 of Cr.P.C., vide order dated 06.01.2023 passed In MCRC No.199/2023 [*Natwar Singh vs. The State of Madhya Pradesh*], has observed as under:-

This Court, in Miscellaneous Criminal Case No.43856/2021 (**Bherulal s/o Radheshyam Dhakad v. Central Government through Police Station C.B.N. Mandsaur District Mandsaur MP**), vide order dated 23.09.2021, while relying upon a decision rendered by the Supreme Court in the case of **Murleedharan v. State of Kerala reported as 2001 SCC (Criminal) 795** has taken a view that such an application under Section 438 of Cr.P.C. cannot be allowed. In this case, while dealing with a similar provision, Section 41-A of the Kerala Abkari Act,

the Supreme Court has held, that: -

“According to the Sessions Judge “no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused”.

The above provision is in *pari materia* with Section 37 of the Narcotic Drugs and Psychotropic Substances Act. This Court has held, time and again, MCRC No.199/2023 that no person who is involved in an offence under that Act shall be released on bail in contravention of the conditions laid down in the said Section. (**vide Union of India v. Ram Samujh [1999 (9) SCC 429]**).

10. Relying upon the law laid down by the Hon'ble Apex Court in the case of **Samarth Kumar (supra), Murlidharan (supra) and Tofan Singh (supra)**, this court is of the considered opinion that although present applicant has been implicated as an accused on the basis of disclosure statement given by other co-accused and no recovery was effected from him, but looking to the gravity of offence and nature of crime, the present applicant does not deserve for anticipatory bail. Accordingly this anticipatory bail application filed by applicant under section 438 of Cr.P.C. is hereby dismissed.

(PREM NARAYAN SINGH)
JUDGE