

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

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

ON THE 1st OF DECEMBER, 2023

MISC. CRIMINAL CASE No. 52207 of 2023

BETWEEN:-

**DHARAMVEER SINGH S/O DHARMENDRA SINGH
SISODIYA,
AGED ABOUT 32 YEARS,
OCCUPATION: LABOR
R/O GRAM CHALDU TEHSIL JEERAN
DISTT. NEEMUCH (MADHYA PRADESH)**

.....APPLICANT

(DR. KHUZEMA KAPADIA - ADVOCATE)

AND

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

.....RESPONDENTS

(SHRI KSHITIJ VYAS - PANEL LAWYER)

MISC. CRIMINAL CASE No. 50635 of 2023

BETWEEN:-

**GULABSINGH S/O RAMSINGHJI,
AGED ABOUT 60 YEARS,
OCCUPATION: AGRICULTURE
R/O VILLAGE PETLAWAD
DISTT. MANDSAUR (MADHYA PRADESH)**

.....APPLICANT

(SHRI ASHISH GUPTA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH**

**POLICE STATION RINGNOD
DISTT. RATLAM (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI KSHITIJ VYAS - PANEL LAWYER)
.....

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

ORDER

This order shall government with the disposal of these bail applications as they are arisen out of same crime of the police station, hence, they are heard analogously and are being decided by this common order.

2. M.Cr.C. No.52207/2023 is bail application filed on behalf of the applicant-Dharamveer Singh under Section 438 of the Code of Criminal Procedure for grant of bail.

3. M.Cr.C. No.50635/2023 is second bail application filed on behalf of the applicant-Gulab Singh under Section 438 of the Code of Criminal Procedure for grant of bail. Earlier application M.Cr.C. No.47122/2023 is dismissed as withdrawn vide order dated 27.10.2023.

4. The applicants are apprehending their arrest in relation to FIR/Crime No.304/2023, registered at Police Station-Ringnod, District-Ratlam, for the offence punishable under Sections 34(2) of M.P. Excise Act.

5. Learned counsel for the applicants submits that the applicants are innocent and have been falsely implicated in this offence. Applicant Dharamveer Singh is license holder, therefore he cannot be made accused under Section 34(2) of M.P. Excise Act. Applicants are implicated in the case only on the basis of memo of Statement of co-accused persons and nothing has been seized from the applicants. Applicants are ready to co-operate with the investigation and final conclusion of the trial will take considerable long time.

Hence, he prays that the application of the applicants be allowed and they be granted the benefit of anticipatory bail.

6. Per contra learned Panel Lawyer opposed the prayer by submitting that custodial interrogation of applicants is necessary. Provisions of anticipatory bail are not applicable for offences under Section 34(2) of M.P. Excise Act. So far as the license of applicant Dharamveer Singh is concerned, such type of license cannot empower the applicant to sell out the liquor from another place other than the authorised outlet. As per prosecution case, the seized liquor is of illegal liquor, hence the applicants are not entitled for grant of anticipatory bail.

7. Heard learned counsel for the parties and perused the record.

8. So far as, the fact that the applicant-Dharamveer Singh 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 vide 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.”

9. 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.

10. 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."

11. 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]**).

12. 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 applicants have been implicated as accused on the basis of disclosure statement given by other co-accused and no recovery was effected from them, but looking to the gravity of offence and nature of crime, they not entitled for anticipatory bail.

13. So far as the condition of license is concerned certainly applicant/accused can have license for selling the liquor in his outlet, but when the liquor was seized from another place then liquor so seized cannot be governed by that license and that liquor could not be said to be legal. So also the provisions of anticipatory bail are not applicable for offences under Section 34(2) of M.P. Excise Act. Therefore, in the considered opinion of this Court, applicants are not entitled for grant of anticipatory bail , accordingly, M.Cr.Cs is hereby dismissed.

**(PREM NARAYAN SINGH)
JUDGE**

sumathi

