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

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

ON THE 23rd OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 3425 of 2024

BETWEEN:-

**SANDEEP RAI S/O MUKESH RAI,
AGED ABOUT 28 YEARS,
OCCUPATION: LABOUR
R/O POST SADWA
DISTT. CHHATARPUR
(MADHYA PRADESH)**

.....APPLICANT

(SHRI MANU MAHESHWARI - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION INDUSTRIAL AREA DEWAS
DISTT. DEWAS (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SAMEER VERMA - PANEL LAWYER)

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

ORDER

This is the first bail application filed on behalf of the applicant under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail. The applicant is apprehending his arrest in relation to Crime No.820/2023, registered at Police Station- Industrial Area Dewas, District Dewas for the offence under Section 34(2) of M.P. Excise Act, 1915.

(2) As per prosecution story, a truck bearing registration no.MP 09 GG 149 intercepted, from which 5759 quarters (2169 bulk liters) of foreign liquor

was seized from possession of the applicant.

(3) Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in this case. It is further contended that the applicant has been made accused in the present case only on the basis of Statements co-accused recorded under section 27 of the Evidence Act, there is no sufficient evidence against the applicant to connect him with the offence. 5759 quarters (2169 bulk liters) of foreign liquor was recovered from the truck and two accused persons Kanu and Sunil were arrested and in the statement recorded under Section 27 of Evidence Act, they deposed that the present applicant loaded the illicit liquor in the vehicle. The applicant was working in a particular liquor shop and loaded the alleged liquor in the vehicle. However, as per the information obtained from RTI, District Excise Officer has stated that the batch number of the liquor said to be seized from the truck was not allotted to the liquor shop in which the present applicant was working. Even if the allegation of prosecution are taken to be true at their face value and accepted in their entirety except memo under Section 27 of Evidence Act, there is nothing on record to connect the present applicant in the present crime.

(4) Learned counsel relied upon the judgments passed in the cases of *Naresh Kumar Lahria vs. State of M.P. (2004[4] MPHT 205*; *Pramod Sethi vs. State of M.P. (2023 SCC Online 3128)*; *Prakash Singh vs. State of M.P. (2023 SCC Online MP 5893)*; *Subhash Kashinath Mahajan vs. State of Maharashtra (2018) 6 SCC 454*; *Sushila Agarwal vs. State (NCT) of Delhi (2020)5 SCC 1 (Constitution Bench)*; *Gurbaksh Singh Sibbia vs. State of Punjab (1980) 2 SCC 565 (Constitution Bench)* in support of his contentions that when the applicant is implicated only on the basis of memo of

co-accused persons recorded under Section 27 of Evidence Act, prima facie case cannot be made out then there is no absolute bar in granting anticipatory bail. Relying upon the judgment of Hon'ble Supreme Court in the case of *Prathvi Raj Chouhan vs. UOI (2020) 4 SCC 727*; counsel contended that if prima facie case cannot be made out, provisions of Section 18 and 18A of SC/ST Act regarding bar in granting anticipatory bail would not apply. Under these circumstances, he prays for grant of anticipatory bail to the applicant.

(5) Learned counsel for the respondent/State opposes the prayer and prayed for its rejection 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. With regard to the batch number is concerned, the seized liquor is illicit one, the batch number cannot be same as that of the allotted number. So also, looking to the quantity of liquor, the applicant is not entitled for any relief from this Court.

(6) I have heard the counsel for the parties and perused the case diary.

(7) So far as the judgments placed reliance by counsel for the applicant i.e. **Naresh Kumar Lahria (supra), Pramod Sethi (Supra), Prathvi Raj Chouhan (supra)** are concerned, the facts of these cases are different to the facts of this case, hence, they are distinguishable. The law laid down by Hon'ble Apex Court celebrated judgments passed in the case of *Subhash Kashinath (Supra), Sushila Agarwal (Supra), Gurbaksh Singh Sibbia (Supra)*, are taken into consideration by this Court while deciding the bail applications.

(8) With regard to the implication of the applicant in the case vide memo under Section 27 of Evidence Act is concerned, it is pertinent to refer the judgment of Hon'ble Apex Court in the case of *The State of Haryana vs.*

Samarth Kumar (Criminal Appeal No.1005 of 2022), wherein it has been held that:

*“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 aforesaid case is related to NDPS Act and certainly the case at hand is related to Excise Act, however, the principle laid down by Hon'ble Supreme Court should be followed in the cases related to Excise Act also because the provisions of Section 59(A) are stringent against the accused persons. It is also relevant to mention here that 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) The question regarding no absolute bar for grant of anticipatory bail if no prima facie case is made out against the accused is concerned, the provisions of Section 59-A of M.P. Excise Act, 1915 would be 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."

In the case at hand prima facie case is made out against the applicant and hence the absolute bar in granting anticipatory bail shall not apply.

(11) With regard to the information in respect of matching of batch number is concerned, since the liquor seized is of illegal nature, hence the question of same batch number does not arise.

(12) This Court, while deciding the application filed under Section 438 of Cr.P.C., vide order dated 06.01.2023 passed In MCRC No.199/2013 [*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]**).

In the case at hand also interrogation of applicant is indispensably necessary for the investigating agency to unearth all the links involved in the criminal offence.

13. Now 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 applicant has been implicated as 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 applicant is not entitled for anticipatory bail.

(13) In the case of *Natwar Singh (supra)*, this Court has declined anticipatory bail to the applicant wherein 54 bulk liters of country made liquor was recovered, whereas, in the case in hand, 5759 quarters of English liquor (2169 bulk liters) huge quantity was recovered and investigation is still pending against the applicant. Therefore, in view the aforesaid settled proposition, the bar under Section 59-A of the M.P. Excise Act, will be absolutely applicable, hence in the considered opinion of this Court, the applicant is not entitled for anticipatory bail. Hence, the application is rejected.

(PREM NARAYAN SINGH)
JUDGE