

IN THE HIGH COURT OF MADHYA  
PRADESH  
AT JABALPUR  
BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT  
ON THE 23<sup>rd</sup> OF JUNE, 2023

MISC. CRIMINAL CASE No. 23717 of 2023

**BETWEEN:-**

PAVAN GOUR S/O BABULAL OCCUPATION:  
LABOUR R/O CHHOLA RAOD SHRI RAM NAGAR  
COLONY HUZUR DISTRICT BHOPAL (MADHYA  
PRADESH).

.....APPLICANT

(BY SHRI AJAY KUMAR JAIN - ADVOCATE)

**AND**

THE STATE OF MADHYA PRADESH THROUGH  
POLICE STATION CRIME BRANCH, DISTRICT  
BHOPAL (MADHYA PRADESH).

.....RESPONDENT

(BY MS. SWETA YADAV - GOVERNMENT ADVOCATE)

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

**ORDER**

This is the **first** application filed by the applicant under Section 439 of the Code of Criminal Procedure for grant of regular bail relating to FIR No. 52/2023, registered at Police Station Crime Branch Bhopal, District Bhopal (M.P.) for the offence punishable under Section 34(2) of M.P. Excise Act.

2. Learned counsel appearing for the applicant submitted that no

offence under Section 34(2) of M.P. Excise Act, 1915 is made out against applicant. It is submitted that as per Section 34(2), two conditions are mandatory (i) accused must have been convicted for an offence under clause (a) or (b) of sub-section (1) of Section 34 and (ii) applicant has committed an offence in respect of Excise Act, wherein liquor exceeds 50 bulk liters. Unless these two conditions are there, offence under Section 34(2) of M.P. Excise Act, 1915 will not made out.

3. Learned Government Advocate appearing for the State has opposed the application for grant of bail. It is submitted by her that word 'and' mentioned in Section 34(2) is to be read as 'or' and therefore, offence is made out. In these circumstances, prayer is made that application be dismissed.

4. Heard learned counsel for the parties.

5. Section 34(1)(a)(b) and Section 34 (2) of the MP Excise Act, 1915 are quoted as under:-

*"34 Penalty for unlawful manufacture, transport, possession, sale etc.— (i) Whoever, in contravention of any provisions of this Act, or of any rule, notification or order made or issued thereunder, or of any condition of a licence, permit or pass granted under this Act,—*

*(a) manufactures, transports, imports, exports. collects or possesses any intoxicant;*

*(b) save in the cases provided for in Section 38, sell any intoxicant."*

*"Section 34(2) Notwithstanding anything contained in*

*sub -section (1), if a person is convicted for an offence covered by clause (a) or clause (b) of sub -section (1) **and** the quantity of the intoxicant being liquor found at the time or in the course of detection of the offence exceeds fifty bulk litre, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than twenty five thousand rupees but may extend to one lac rupees:*

*Provided that when any person is convicted under this section for an offence for second or subsequent time, he shall be punishable for every such offence with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than fifty thousand rupees but may extend to two lac rupees.”*

6. Word used in Section 34(2) of the Act is ‘and’ and not ‘or’ on basis of which counsel appearing for applicant has argued that there has to be both ingredients of Section 34(2) i.e. quantity of liquor exceeding fifty bulk litres and accused is convicted of an offence covered under Clauses- (a) and (b) of Section 34(1) only then offence under Section 34(2) will be made out.

7. Justice G.P. Singh in Principles of Statutory Interpretation has mentioned that word ‘or’ is disjunctive and word ‘and’ is normally conjunctive but at times they are read *vice versa* to give effect to manifest intention of the Legislature as disclosed from the context. Now it is to be

looked into Section to find out the intent of the Legislature whether word 'and' used in Section 34(2) of MP Excise Act, 1915 is to be read as 'or' or word 'and' it is to be read as 'and' in its normal sense of conjunctive.

8. On reading of Section 34(1) of the MP Excise Act, it is found that quantity of liquor in respect of which there is violation is not prescribed in said Section, therefore, any amount of liquor which is manufactured, transported, imported, collected, possessed without any license will be covered under Section 34 even liquor more than fifty bulk litre will also be covered under Section 34 of the Act of 1915.

9. On reading of Section 34(2), it is found that offence covered in this Section provides with more harsh penalty which shows that offence covered under Section 34(2) is more serious in nature. Illicit possession, manufacturing or sale of fifty bulk liter is covered under Section 34(2) of the MP Excise Act, 1915 with addition that offender must have been convicted under Section 34(1)(a)(b) also. No quantity of liquor is prescribed in Section 34(1), therefore, possessing more than fifty bulk liter will also be covered under Section 34(1)(a). Only distinguishing feature between under Section 34(1)(a) and Section 34(2) is that there is also requirement of earlier conviction under Section 34(1)(a) of MP Excise Act, therefore word 'and' used in Section 34(2) cannot be read as 'or' and requirement of Section 34(2) is fulfilling both the requirements as laid down in said Sections.

10. In these circumstances, Legislature cannot have intention that word 'and' used in Section 34(2) is to be read as 'or'. Word 'and' in

Section 34(2) is to be read in its normal sense of conjunctive. In view of same, requirement for making out case under Section 34(2) is conviction under Section 34(1)(a)(b) and subsequent offence is in relation to liquor exceeding fifty bulk liter.

11. In view of aforesaid, no offence under Section 34(2) is made out against the applicant as applicant had not been convicted for offence under Section 34(1)(a)(b). Resultantly, bail application filed by applicant is ***allowed.***

12. It is directed that applicant shall be released on bail on his furnishing personal bond in the sum of ***Rs.50,000/- (Rupees Fifty Thousand only)*** with one solvent surety in the like amount to the satisfaction of the trial court for his appearance before the trial court on the dates to be fixed by the trial court.

13. The applicant shall abide by the conditions enumerated under Section 437(3) of Cr.P.C.

14. C.C as per rules.

**(VISHAL DHAGAT)**  
**JUDGE**