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

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT  
ON THE 8<sup>th</sup> OF FEBRUARY, 2024**

**MISC. CRIMINAL CASE No. 5137 of 2024**

**BETWEEN:-**

**PAWAN MANKAR S/O SHRI BHIMRAO MANKAR, AGED  
ABOUT 30 YEARS, OCCUPATION: PRIVATE JOB  
(WORKING IN LIQUOR SHOP) R/O C-SECTOR  
SARVDHARAM KOLAR ROAD BHOPAL DISTRICT  
BHOPAL (MADHYA PRADESH)**

**.....APPLICANT**

***(BY SHRI ANKIT SAXENA - ADVOCATE)***

**AND**

**THE STATE OF MADHYA PRADESH THROUGH POLICE  
STATION KOLAR ROAD DISTRICT BHOPAL (MADHYA  
PRADESH)**

**.....RESPONDENT**

***(BY SHRI G.S. THAKUR - GOVERNMENT ADVOCATE)***

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

**ORDER**

This is first application filed by the applicant under Section 439 of the Code of Criminal Procedure for grant of regular bail relating to FIR No.402/2023 registered at Police Station Kolar Road District-Bhopal (M.P.) for the offence under Section 34(2) of the M.P. Excise Act.

2. As per prosecution story, police received an information from informer and thereafter, during checking, one Activa two wheeler was stopped and one occupant of Activa escaped and other person was caught. He told his name to be Pawan Mankar. Total 63 bulk liters of liquor was seized from

applicant. Considering the aforesaid fact, trial Court has rejected the application taking into Section 59-A(II) of the M.P. Excise Act, 1915.

3. Learned counsel appearing for the applicant submitted that applicant has not previously been convicted under Section 34(1) of M.P. Excise Act, 1915 and further Section 59-A(II) does not create any bar grant of bail to accused persons. It is submitted that trial Courts refused bail to accused person in view of Section 59-A(II) of the M.P. Excise Act, 1915.

4. Learned Government Advocate appearing for the State opposed the application for grant of bail. It is submitted that more than 50 bulk liter of liquor has been seized from applicant on spot. Section 59-A of the M.P. Excise Act lays down that bail shall not be granted to a person more than 50 bulk liters of liquor without any licence. Hence, trial Court has rightly rejected the application for grant of bail.

5. Heard the counsel for the parties.

6. Section 59-A(II) of the M.P. Excise Act, 1915 is quoted as under:-

"A person, accused of an offence punishable under Section 49-A or 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 liters shall not be released on bail or on his own bond 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."

7. Aforesaid Provision lays down that bail shall not be granted in cases where accused was found in possession of 50 bulk liters of liquor without licence unless Public Prosecutor has been given an opportunity to oppose the application for grant of bail and if bail is opposed then Court shall not grant bail unless satisfied that there are reasonable grounds for believing that accused is not guilty of such offence. Section 59-A(II) does not create any bar on grant of bail to the accused person only requirement is of opportunity of hearing to be given the Public Prosecutor and on his opposition Court has to record reasons that accused is not guilty of offence. Not guilty of offence does not mean beyond reasonable doubt but there is strong probability of his not being involved in offence as per evidence collected in case diary.

8. Considering the fact that there is no previous conviction of applicant under Section 34(1) (a) of the M.P. Excise Act, no offence may be made out under Section 34(2) of the Excise Act. In these circumstances, application is *allowed*.

9. It is directed that the applicant shall be released on bail on furnishing personal bond of **Rs.50,000/- (Rs. Fifty Thousand Only)** with one solvent surety in the like amount to the satisfaction of the trial Court concerned for his regular appearance before Court on all such dates as may be fixed in this regard during pendency of trial.

10. The applicant shall also abide by the following conditions of Section 437 (3) of Cr. P. C. as under:-

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;

(b) that such person shall not commit any offence similar to the offence of which he is accused, or suspected of the commission of which he is suspected and;

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

C.C. as per rules.

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