(2020) 12 CHH CK 0004

Chhattisgarh High Court

Case No: MCRCA No. 1172 Of 2020

Bhima @ Jagdev Jaiswal		APPELLANT
	Vs	
State Of Chhattisgarh		RESPONDENT

Date of Decision: Dec. 4, 2020

Acts Referred:

- Chhattisgarh Excise Act, 1915 - Section 34(2), 59A
- Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 - Section 18, 18A
- Code Of Criminal Procedure, 1973 - Section 160, 438

Hon'ble Judges: Manindra Mohan Shrivastava, J

Bench: Single Bench

Advocate: Ravindra Sharma, Lalit Jangde

Final Decision: Disposed Of

Judgement

Manindra Mohan Shrivastava, J

Heard.

1. The applicant is apprehending his arrest in connection with Crime No.31/2020 registered at Police Stationâ€" Excise Circle Baloda Bazar, District-

Baloda Bazar- Bhatapara (C.G.) for alleged commission of offence under Section 34 (2) of Excise Act.

2. Prosecution case is that upon receipt of information, the Assistant Excise Officer with his team raided the premises which is alleged to be belonging

to the present applicant and it is alleged that from the premises, 27.360 bulk litre of Goa made whisky was seized.

3. Learned counsel for the applicant would submit that the applicant is a respectable inhabitant and businessman in his area and allegation was made

to falsely implicate. He would submit that false proceedings have been drawn which is manifest from the fact that in various documents initially a

signature of the name 'Bhima' was taken and then it was erased with whitener. He would further submit that the seizure of liquor has been made from

a house but the applicant has nothing to do with this house because he is neither occupant nor owner of the premises and it is being falsely stated

without any material that it belongs to the present applicant. Learned counsel for the applicant would submit that no prima facie case is made out

against the applicant but on the other hand, it is a case of false implication, therefore, the applicant may be protected by grant of anticipatory bail

notwithstanding the bar under Section 59-A of the Chhattisgarh Excise Act, 1915 (for short 'the Act of 1915') in view of the decisions in the cases of

Lakhan Sahu Vs. State of Chhattisgarh, 2007 CGLJ 8 and Gyanchand Jain Vs. State of Chhattisgarh, 2016(2) CGLJ 295.

4. On the other hand, learned counsel for the State opposes prayer for grant of anticipatory bail on two counts. He would firstly submit that in view of

bar under Section 59-A of the Act of 1915, as in the present case huge quantity which is more than 5 bulk litre as prescribed under the law, application

for grant of anticipatory bail is not maintainable, therefore, the applicant deserves to be rejected outright.

5. The other submission of learned counsel for the State is that when upon receipt of Mukhbir information, police raided the premises, huge quantity of

liquor in 27.360 bulk litre was seized and the premises are stated to be belonging to the present applicant only. He would submit that the matter is still

under investigation, therefore, it cannot be said that there is no prima facie case is made out against the present applicant.

6. I have heard learned counsel for the parties and perused the case diary also.

7. In the present case, offence has been registered against the applicant on the allegation that when the premises allegedly belonging to the applicant

was raided, a total quantity of 27.360 bulk litre of Goa made liquor was seized.

8. Section 59-A of the Act of 1915 bars grant of anticipatory bail in cases where person is found in unauthorised and illegal possession of liquor which

is more than stated bulk quantity. At present, the provisions contained in Section 59-A of the Act of 1915 provides that anticipatory bail application

shall not be entertained where the accused is found in illegal possession of liquor which is more than 5 bulk litre in quantity. The total quantity which is

alleged to have been seized in this case is more than 5 bulk litre.

9. However, this Court in series of decisions has held that where prima facie case is not made out, the Court is not bereft of his power to grant benefit

of anticipatory bail in appropriate cases of exceptional nature, as held in the cases of Lakhan Sahu (supra) & Gyanchand Jain (supra).

10. In a recent judicial pronouncement of the Supreme Court in the case of Prathvi Raj Chauhan Vs. Union of India & others, 2020(4) SCC 727, while

examining challenge to the constitutionality of Section 18-A of the SC & ST Act, 1989, it has occasion to examine the scope of Section 18 of that Act

also with particular reference to maintainability of application for grant of anticipatory bail under Section 438 Cr.P.C. as against statutory bar created

under Section 18 of that Act. Section 18 of the SC & ST Act creates bar by providing that nothing in Section 438 of the Code shall apply in relation to

any case involving the arrest of any person on an accusation of having committed an offence under the said Act. Despite such a statutory bar created,

the Supreme Court held that such a bar may not come in the way for grant of anticipatory bail by taking recourse to provision contained in Section 438

Cr.P.C. where complaint does not make a prima facie case for applicability of the provisions of the 1989 Act. It was held :

â€œ11. Concerning the applicability of provisions of Section 438 Cr.PC, it shall not applyÂ to theÂ casesÂ underÂ theÂ 1989 Act.

However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and

18- A(i) shall not apply.

We have clarified this aspect while deciding the review petitions.â€

In separate but concurring judgment rendered by S. Ravindra Bhatt, J., also it was held:

â€œ33. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court

has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure

Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and

further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of

law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-

arrest bail would defeat the intention of Parliament. â€

11. The provision contained in Section 59-A of the Act of 1915 insofar as maintainability of application for anticipatory bail is concerned are somewhat

similar. In Section 59-A (i), it has been provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973 or Section 59 of the

Act, 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 5 bulk litre.

In the present case, the accusations against the applicant are that 27.360 bulk litre of Goa made Whisky was seized from the premises which is

alleged to be belonging to the present applicant.

12. The principles which have been laid down by the Supreme Court in the case of Prathvi Raj Chauhan (supra) with regard to maintainability of

application for anticipatory bail despite statutory bar would also be applicable while entertaining application for grant of anticipatory bail filed by an

applicant, who is accused of committing an offence under the Excise Act where the accusation is of seizure of liquor in quantity which is more than 5

bulk litre. Ordinarily in such cases, anticipatory bail is not to be granted because of the statutory bar. However, in exceptional cases, where no prima

facie case is made out or where there is substantial force in the case of the applicant that it appears to be a case of false implication, the power for

grant of anticipatory bail could be exercised to prevent miscarriage of justice. Such cases, however, are only exceptional in nature and not in routine

and bail cannot be granted in routine manner. With this principle, the case of the applicant is to be examined.

13. According to the learned counsel for the applicant, the proceedings of seizure are false. He would submit that even before registering the offence

against the present applicant and setting a hunt for his arrest, the prosecution did not collect any document or any material evidence of prima facie

nature that the premises wherefrom liquor was seized belonged to the present applicant.

14. The case diary shows that the Excise Authority received an information with regard to unauthorized storage of liquor in a house, which is alleged

to be belonging to the present applicant. A notice under Section 160 Cr.P.C. was given to the witnesses that such information has been received and

search is required to be carried out to seize the liquor, the witnesses have been informed that the premises belongs to the present applicant. Two

witnesses Rohit and Kamdeo thereafter went along with Excise Officer and his team and then it is alleged that from the premises said to be belonging

to the present applicant, a total quantity of 27.360 bulk litre of Goa made Whisky was found in a jute bag which was kept for sale. This Court in order

to find out a prima facie case looked into 'Jama Talashi Panchnama', 'Talashi Panchnama', 'Madira Parikshan Panchnama' and 'Makaan/Hotel

Adhipatya Panchnama', in all these Panchnamas, the Assistant District Excise Officer, who was prepared those documents, has put his signature and

also accompanied with signature of Rohit and Kamdeo as the witnesses. There is a signature appearing on these documents which records signature

as 'Bhima'. However, this signature has been erased with a whitener. Mentioning and thereafter erasing of the signature in the name 'Bhima' has

happened in all the documents namely 'Jama Talashi Panchnama', 'Talashi Panchnama', 'Madira Parikshan Panchnama', and 'Makaan/Hotel

Adhipatya Panchnama'.

15. It is not a case of the prosecution that it was seized from the possession of the applicant in the sense that the applicant was either carrying it or

that he was sitting in the same house where the liquor was seized. Obviously, had it been so, the applicant would have been arrested at the spot.

Interestingly enough, two witnesses of the prosecution, in their statements have not stated regarding presence of the applicant but have said that the

accused was absconding. If that was so, appearance of his signature in the name of 'Bhima' and it subsequent erasing by whitener raises serious

doubt with regard to the case of the prosecution. There is considerable force in the submission of learned counsel for the applicant that these papers

were prepared elsewhere but later on changed.

16. Though, the seizure is said to have been effected on 26.07.2020, till date, there is no material in the case diary to show that the house wherefrom

liquor was seized is either registered in the name of the applicant as the owner thereof or someone has stated that it was given on rent or otherwise by

someone to the present applicant or any statement of any of the neighbors residing that vicinity that the house wherefrom seizure was made, was

being occupied and the accused was living in that house till the date, accused was using that place as place of residence till the date search was

carried out. There is absolutely nothing in the records and in the case diary to show even prima facie any of the aforesaid facts.

17. These exceptional features of the present case, inevitably lead to formation of opinion by this Court that prima facie case is not made out against

the present applicant.

18. Therefore, applying the law laid down by this Court in decisions cited earlier as also recent judicial pronouncement of the Supreme Court in the

case of Prathvi Raj Chauhan (supra), present is a fit case for grant of anticipatory bail to the applicant.

19. Accordingly, it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail on his

furnishing a personal bond in the sum of Rs.25,000/- along with one local surety of the like amount to the satisfaction of the arresting officer and the

applicant shall abide by all the following terms and conditions -

1. that the applicant shall make himself available for interrogation by a Police Officer as and when required;

2. that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade

him from disclosing such facts to the Court or to any Police Officer.

3. that he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

4. that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.