

**Hariram Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/506165](http://sooperkanoon.com/506165)

**Court :** Madhya Pradesh

**Decided On :** Feb-13-2001

**Reported in :** 2001(3)MPHT178; 2001(2)MPLJ202

**Judge :** Mr. J.G. Chitre, J.

**Acts :** Madhya Pradesh Excise Act, 1915 - Sections 49-B and 59-A; Madhya Pradesh Excise (Amendment) Act, 2000 - Sections 34; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 59

**Appeal No. :** Misc. Cr. Case No. 137/2001

**Appellant :** Hariram

**Respondent :** State

**Advocate for Def. :** Shri G. Desai, ;Dy. Advocate General

**Advocate for Pet/Ap. :** Shri Jaisingh, Adv.

**Judgement :**

ORDER

**J.G. Chitre, J.**

1. Shri Jaisingh for the applicant and Shri G. Desai, Dy. A.G. for the prosecution.

2. So far as the present bail application is concerned, Shri Jaisingh submitted that the investigating agency had arrested Omprakash, the owner of the hut where the present illicit foreign liquor was found in bottles which was more than 50 bulk litres. He submitted that the statement of Omprakash has been recorded by the Excise Officer concerned and that shows that present applicant was his employee and in the absence of Omprakash was selling the liquor to the customers. Shri Jaisingh submitted that the statement of the applicant has also been recorded in which he had admitted the said information. Shri Jaisingh submitted that the said statement has been retracted by the present applicant and, therefore, it would not be having any credibility at the time of trial against the present applicant.

3. Shri Jaisingh submitted that in view of all these things and provisions of Section 49-B and provisions of M.P. Excise (Amendment) Act, 2000, Section 34 of the Excise Act, the applicant would be entitled to get the bail and therefore, he be released on bail.

4. Shri G. Desai counsel appearing for the prosecution objected to this prayer for bail made by the present applicant Hariram. Shri Desai submitted that the statement of Hariram and Omprakash would be corroborating the evidence of the concerned officers from the Excise Department and those statements can be used against the present applicant and if the statement so recorded by the concerned Excise Officer is used against Hariram at the time of trial, it would end in conviction against him for an offence indicated by provisions of Section 34 of the M.P. Excise Act. Shri Desai further pointed out that the quantity is more than 50 bulk litres.

5. Shri Desai further submitted that the applicant was doing the work of selling the said liquor to the customers on order of his master Omprakash but that does not mean that he was not involved in selling the said liquor, Shri Desai submitted that the present applicant Hariram is equally liable for punishment as his master Omprakash is liable to be punished for the possession and selling the said illicit liquor. Shri Desai further submitted that the provisions are indicating that the Court should be satisfied prima facie, that the accused is not guilty of the offence for which he has been charged. So far as the retraction of the confessional statement is concerned, Shri G. Desai submitted that it is belated one and it is only for the

purpose of getting exonerated from the liability of being punished. He submitted that the bail application be dismissed.

6. Section 59-A of the M.P. Excise (Amendment) Act, 2000 (hereinafter referred to as 'the Amending Act' for convenience) provides Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (No. 2 of 1974) or Section 59 of the Act, (i) ..... (ii) 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 therein who is accused of an offence covered by clause (a) or clause (b) of sub-clause (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 shall not be released on bail or on his own bond unless the Public Prosecutor has 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. Clause (iii) provides that the limitation for grant of bail specified in clause (ii) are in addition to limitations prescribed under the Code of Criminal Procedure, 1973 (No. 2 of 1974) or any other law for the time being in force regarding granting of bail.

7. The neat reading of this provision indicates that the presumption of guilt which has been indicated by this provision is a rebuttable. Of course, the accused will have to demonstrate the circumstances which would satisfy the Court that such concerned accused is not guilty of the offence for which he has been charged in addition to non commission of further offence. In the present case it will have to be seen whether the investigating agency had not collected the evidence in the nature of statement of a witness who had gone there for the purpose of purchasing such liquor from Hariram. The investigation done so far shows that prosecution is not in possession of any evidence to indicate that way. The second question would be as to who was the owner of the said stock of liquor The evidence so far collected shows that accused Omprakash was the owner of the said liquor which was stocked in the said hut. This raid must have been effected by the raiding party after getting information. In that case it was well possible for the investigating agency to send a decoy or a punter for the purpose of purchasing the said liquor

from the present applicant Hariram. But the evidence so far collected does not show that any decoy or punter was sent for the purpose of establishing the fact that applicant was selling the liquor. Another question which remains for consideration is whether the present applicant was knowing that the liquor which was stored in the said hut was more than 50 bulk litres. On all these points, the material collected by the prosecution so far, itself enables the accused to demonstrate that prima facie he is not guilty for the offence for which he has been charged,

8. Apart from that, applicant Hariram happens to be a poor person and a menial servant of Omprakash. The bottles of foreign liquor must have been bearing the labels on the bottles in English language. There is nothing on record to show that the applicant was that way educated to decipher the things which were printed on the labels of the bottles. Even there is nothing on the record to show that he was knowing Hindi and was educated to that level. Thus, this Court is satisfied that there are prima facie grounds to show that applicant is not guilty of the offence for which he has been charged and is to be prosecuted. Therefore, in view of the provisions of Section 59-A as mentioned above, this Court releases applicant Hariram on bail on his furnishing security to the extent of Rs. 50,000/- with one surety and PR Bond to that extent to be furnished before the Trial Court. He shall not threaten, contact or induce any of the prosecution witnesses and shall not indulge in any offence punishable under the provisions of the M.P. Excise Act.

9. The observations made above, are limited only to the decision of this bail application. They shall not in any way weigh at the time of trial in assessing and appreciating the evidence in the trial.