

102 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56031-2018 (O&M)

Date of decision:18.12.2018.

Paramjit Singh @ Pamma

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

The present petition has been filed by the petitioner under Section 438 of Code of Criminal Procedure (for short 'Cr.P.C) for grant of anticipatory bail in FIR No.144, dated 05.06.2018, under Section 61 of the Punjab Excise Act 1914, registered at Police Station Sadar Ferozepur District Ferozepur.

The allegation against the petitioner is that patrolling party of the police, received a secret information that Gajjan Singh and the present petitioner-Paramjit Singh @ Pamma, both brothers, are indulging in extracting illicit liquor. It was informed that the petitioner and his brother were extracting illicit liquor from heavy quantity of raw material (Lahan) in the boundaries of Faat in the area of Nihla Kilcha, at the distance from the bank of the river. If raid is conducted now; then from this place heavy quantity of illicit liquor along with raw material can be recovered. Believing the information to be correct, the police reached the spot. After reaching the spot, the police saw that the petitioner and his brother. But they ran away from the spot after seeing the police. However, from the spot, the police had recovered 27000 kg of raw material (Lahan), 20

cylinders containing illicit liquor and 7 drums containing 200 kg of raw material (Lahan) each. On these allegations, the present FIR has been registered.

Learned counsel for the petitioner has submitted that recovery of the alleged material has already been made. Therefore, the petitioner would not be required for custodial interrogation. It is further contended that the story of the prosecution is concocted by the police because it is not possible to run away in the presence of the police.

Having heard learned counsel for the petitioner, this Court does not find it to be a fit case where the petitioner should be granted protection against his arrest. As per the allegation, the material found from the spot, where the petitioner and his brother were conducting the illegal activity of extracting the liquor, is in such huge quantity that it cannot be implanted. The material allegedly recovered from the spot also suggests that the petitioner and his brother were running virtually, a factory for extracting illicit liquor. The allegation also shows that the petitioner had slipped away from the spot. Therefore, to unearth the true dimensions of this illegal activity, the police would require the custody of the petitioner.

It is well settled by the judgments of the Hon'ble Supreme Court that the custodial interrogation of accused is qualitatively and quantitatively different than the one when the accused is subjected to interrogation while having sense of protection of the Court order. Unless the police are given a free hand, the police would not be in a position to arrive at a true conclusion about the facts involved in the present case, particularly, keeping in view the dimensions of the activity being allegedly conducted by

the petitioner and his brother. Of course, the petitioner, as a citizen, has right to life and liberty, however, that right can very well be subject to a reasonable restriction through the procedure prescribed under law. The normal procedure prescribed for curtailing the right to life and liberty of the accused, in case of criminal investigation; is that the petitioner can be arrested even without warrant by the Investigating Officer. The power given under Section 438 Cr.P.C. is extraordinary power; to be exercised by the Courts with due circumspection. This power is so extraordinary that is power is not even available in some part of the country and qua some of the offences under some special statutes. Therefore, this extraordinary powers can be exercised by the Courts only when there are extenuating circumstances, predominantly leading, prima facie, towards the innocence of the accused vis-a-vis the allegations levelled against him, coupled with the fact that if the accused is protected against arrest, then the investigation of the case would not be unduly hampered.

In the facts of the present case, this Court does not find any extenuating circumstances, in favour of the petitioner, to prima facie show his innocence vis-a-vis the allegations levelled against him.

In view of the above, there is no merit in the present petition.

Dismissed.

(RAJBIR SEHRAWAT)
JUDGE

18.12.2018

Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No