

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.17377 of 2020
DATE OF DECISION : 3rd JULY, 2020

Dalbir Singh alias Dulla

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present: Ms. Kiranjeet Kaur, Advocate for
 Mr. Harpreet Singh Jakhal, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory/pre-arrest bail in case FIR No.136 dated 24.08.2018 registered under Sections 380 & 457 IPC, at Police Station Sadar Sri Muktsar Sahib.

It is contended by counsel for the petitioner that the allegation against the petitioner is that the petitioner; along with other co-accused, have stolen 43 boxes from the liquor vend. However, the case against the petitioner is totally concocted. Initially the complainant had not named any person. The complainant had submitted that he was sleeping on the roof of the liquor vend when somebody has stolen the boxes of the liquor from the liquor vend. It is only subsequently that the name of the petitioner has been sought to be involved on the supplementary statement of the complainant. However, there is no basis for including the name of the petitioner as an accused in this case. The

complainant has named the petitioner only on the basis of alleged private inquiries made by him. The petitioner is not connected with the crime at all. Hence, he deserves to be granted anticipatory bail.

Notice of motion.

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab, accepts notice on behalf of the State.

Learned State counsel, being instructed by ASI Rajinder Singh, submits that the name of the petitioner has specifically surfaced in the matter. Although, initially the complaint was against some unknown persons, however, the complainant has made supplementary statement, specifically naming the petitioner and other co-accused. The recovery of 4 boxes of liquor has already been made from the co-accused. Even the batch number of the liquor boxes have matched with one, which was found to be supplied to the liquor vend. The co-accused of the petitioner has specifically named the petitioner as his accomplice. The police need to investigate the matter thoroughly to find out the exact details of the crime. Hence the petitioner does not deserve any concession.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance /interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-

facie innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision of Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

Coming to the fact of the present case, there are specific allegations against the petitioner. The petitioner is alleged to have stolen the liquor boxes from the liquor vend in conspiracy and with participation of his co-accused. Part of the stolen material has already been recovered from the co-accused. Not only the complainant, even the co-accused have named the petitioner as the accused in the matter. Hence, the facts and circumstances of the case do not show, *ex-facie*, innocence on the part of the petitioner. Moreover, the alleged stolen liquor boxes are yet to be recovered. If the petitioner is granted the protection at this stage, it would hamper the free and fair investigation by the police.

In view of the above, but without commenting anything more on merits of the case, the present petition is dismissed.

3rd JULY, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>