

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 20055 of 2020 (O&M)

Date of decision : 28.8.2020

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Bartiya Ram @ Raju

.....Petitioner

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Mr. Gaurav Garg Dhuriwala, Senior DAG, Punjab.

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been filed by petitioner Bartiya Ram @ Raju, aged 29 years, resident of village Ghot Pokhar, Tehsil and District Gurdaspur, an accused in FIR No. 90 dated 4.7.2020, for offence under Section 61 of Excise Act, 1914, registered at Police Station, Tibber, District Gurdaspur.

In nutshell, the prosecution story is that, on 4.7.2020, on receipt of a secret information that petitioner-accused has been indulging in illicit distillation and then selling the liquor to various persons, formal FIR was registered and a raid was conducted on his residential house by Police Party led by ASI Harjit Singh. The

accused was found indulging in distillation of illicit liquor by means of working still. However, on seeing the Police Party, the accused had managed to run away from the spot. From his residential house, a working still, 5 bottles of illicit liquor and 15 kgs of lahan were recovered, which were taken into police possession.

Apprehending his arrest in this case, the accused had approached the Court of Sessions at Gurdaspur, seeking pre-arrest bail. His such application, which was assigned to Additional Sessions Judge, Gurdaspur, was however, dismissed by the said court, vide order dated 15.7.2020.

Feeling dissatisfied, he has approached this Court craving for grant of similar relief, which prayer is being opposed by the State counsel.

I have heard, learned counsel for the petitioner, learned State counsel, besides going through the record.

Learned counsel for the petitioner has submitted that story set up by the prosecution is highly improbable because with so many police officials around, the petitioner-accused could not have managed to run away from his house. In support of his contentions, he has referred to authorities *Ankush @ Suraj vs. State of Punjab 2019 (2) Law Herald 948, Bhupinder Singh vs. state of Punjab, 2018 (4) Law Herald 2834 and Arjesh Handa @ Banty @ Ramesh Handa & others. vs. state of Punjab in CRM-M-40938-2015 decided on 1.2.2016.*

He has further contended that the petitioner has since joined

the investigation, as per direction of this Court, therefore, he be granted pre-arrest bail.

Whereas, stiff opposition has come from the State counsel, who had contented that petitioner does not deserve any leniency because on seeing the Police Party he had run away from the spot and and further though he has joined the investigation, but he has not furnished the requisite information sought by the Investigating Officer. Therefore, his custodial interrogation is necessary.

After hearing the rival contentions, I find that petitioner does not deserve the concession of pre-arrest bail. Pre-arrest bail is a discretionary relief and it is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and any inconvenience and not to screen the culprits from custodial interrogation.

Here as per the prosecution story, when the raid was conducted on residential house of the petitioner, he was found indulging in illicit distillation by means of a working still and on seeing the Police Party he had run away. Though learned counsel for the petitioner has contended that the case so set up by the prosecution is highly improbable and has referred to judgments in that regard, but I find that this Court is not to go into merits of the prosecution story at this stage. It is for the trial Court to scrutinize the merits of the case, while determining guilt of the accused. The yardstick to determine the guilt of the accused is quite different and distinct from the factors, which are to be taken into consideration for grant of pre-

arrest bail, just like the gravity and seriousness of the allegations against the accused; the requirement of his custodial interrogation by the Investigating Agency; the chances of accused absconding and tempering with the prosecution evidence etc. The judgments referred to by learned counsel for the petitioner had been given on the facts of such cases and cannot be taken to be binding precedent in this case, which has different and distinct facts.

Furthermore, custodial interrogation of the petitioner -accused is found necessary and essential for complete and effective investigation to find out as to from where he had procured the parts of the working still and the items for making lahan, to which persons he had been providing illicit liquor etc., because as informed by the State counsel, though the petitioner has joined the investigation, but has not furnished the complete facts within his knowledge.

It is well settled that custodial interrogation is more elicitation oriented since a person who is couched in comparative safety of pre-arrest bail, would certainly not disclose all the facts within his knowledge, which would be inculpatory for him. In case custodial interrogation of the petitioner is denied to the Investigating Agency, that many leave several loose ends and gaps in the investigation, affecting the investigation being carried out, adversely, which is uncalled for.

Another aspect to be taken into consideration is that recently in the State of Punjab more than 100 poor innocent persons have lost their lives in a hooch tragedy by consuming cheap illicit liquor,

provided by the criminals indulging in illicit distillation.

Under the circumstances, this case is to be viewed with all the more seriousness and grant of pre-arrest bail to the petitioner is not warranted by the facts and circumstances of the case.

Therefore, the petition is found to be without any merit and is dismissed accordingly.

However, nothing discussed above shall have any bearing on the merits of the case.

28.8.2020
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No