

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

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IN VIRTUAL COURT

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CRM-M No. 20526 of 2020

Date of decision : 30.7.2020

Balwinder Singh @ Billu

.....Petitioner

Vs.

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Ashish Aggarwal, Advocate, for the petitioner

Mr. Luvinder Sofat, AAG, Punjab

Rajbir Sehrawat, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of pre-arrest bail in case FIR No. 121 dated 14.7.2020, registered under Section 61 of Punjab Excise Act, 1914, at Police Station Khalra, District Tarn Taran.

The allegations against the petitioner are that the police had received a secret information that the petitioner indulges in distillation of liquor at his home and then selling the same illegally. On receipt of information, the police raided the premises of the petitioner. As per the allegations, the petitioner fled away from the scene, however, the police found 9 cans-fills of illicit liquor, which comes to 535 bottles.

Arguing the case, the counsel for the petitioner has submitted that the case against the petitioner is totally fabricated. In fact, nothing was recovered from his premises. Undisputedly, the petitioner was not arrested from the scene. The falsity of the alleged recovery is clarified by the fact that

no local resident was joined as a witness during the recovery. It is also

submitted that the recovery already stands effected. Hence, nothing more is required to be recovered from the petitioner. Hence, the petitioner deserves the concession of anticipatory bail.

The counsel for the State, being instructed by ASI Sahib Singh, has submitted that there was a specific information; naming the petitioner as the person; who was indulging in distillation of liquor at his premises and selling the same illegally. To confirm the said secret information, police had raided the premises of the petitioner. During the search, liquor equal to 535 bottles was found in 9 cans. Still further, it is submitted by the counsel that the petitioner is habitual of these kind of offences. The petitioner is having five more cases of the same nature against him. It is also pointed out that the last case before the present FIR was in May 2020 only. The police requires custodial interrogation of the petitioner to unearth the dimensions of the trade of the petitioner, as well as to affect the recovery of the distillation equipments and materials. Hence, the petitioner does not deserve any concession of anticipatory bail.

Of course, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C.; is that the investigating officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the investigating agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in

some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the facts of the present case, as per the allegations, there has been huge recovery of illicit liquor from the premises of the petitioner. However, the petitioner is alleged to have fled away from the spot. Still further, it is not even disputed that there are five more cases of similar nature against the petitioner and the last case before the present FIR was only in May 2020. Hence, this Court does not find an ex-facie innocence on the part of the petitioner vis-a-vis the allegations levelled against him.

Still further, since the petitioner fled away from the spot and the police are yet to recover the distillation equipment used by the petitioner in the process of distillation of liquor and also, the police are to get to the exact dimensions of the trade of the petitioner, therefore, if the petitioner is granted protection against his arrest, that would hamper the free and fair investigation by the police.

In view of the above, but without commenting any further upon the merits of the case, the present petition is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

30.7.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No