

S.No.107

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

CRM-M-25364 of 2020 (O&M)

Date of Decision:01.09.2020

Satnam Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

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IN VIRTUAL COURT

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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. R.D. Rattewal, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.107 dated 31.07.2020 registered under Section 61 of the Punjab Excise Act, 1914 at Police Station Rahon, District SBS Nagar.

The allegations involved in the case are that the Police had received a secret information that the petitioner was indulging in distillation of liquor in the fields near Satluj river. Accordingly, a raid was conducted by the Police. On the spot, the petitioner was seen. However, on seeing the Police, the petitioner ran away from the spot. From the spot, the Police recovered 160 litres of 'lahan'. One of the Police officials had recognised the petitioner as well. Accordingly, the case was registered.

Learned counsel for the petitioner has submitted that the case against the petitioner is totally concocted. The petitioner was not even present on the spot. No recovery has been effected from the petitioner. The Police have not even taken revenue records to ascertain as to who is the

owner of the land, from where the recovery has been effected. Learned counsel has also asserted that the very fact that the Police claims to have recognised the petitioner shows that the Police were out to frame the petitioner in the case somehow or the other. Hence, the petitioner deserves concession of bail.

Notice of motion.

Mr. A.P.S. Gill, DAG, Punjab, accepts notice on behalf of the State.

It is submitted by learned State Counsel, being instructed by ASI Surinderpal, that the Police had acted on a specific information. Pursuant to the said information, when the Police had reached the spot, the petitioner was seen along with material used for distillation. Hence, 160 kg of 'lahan' was recovered by the Police. However, on seeing the Police, the petitioner had run away from the spot. Still further, it is submitted that the Police official could recognise the petitioner because they were knowing the petitioner and his family; due to earlier criminal cases against the petitioner. Learned counsel has pointed out that there are, as many as, ten more cases against the petitioner; including several cases under the Punjab Excise Act. He has even been convicted in cases under NDPS Act. Therefore, the petitioner cannot assert that the Police were not supposed to know the petitioner. Still further, it is submitted that the police are to unearth the true dimensions of the illicit trade of the petitioner, hence the custodial interrogation of the petitioner is required.

No doubt, 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, this Court finds that there are specific allegations against the petitioner. The petitioner is alleged to have been recognised by the Police officers who had gone on raid to look for the petitioner. The precious criminal record of the petitioner creates a possibility that the Police might be already knowing the petitioner. Hence, the recognition by the Police officer cannot be faulted on the ground that the Police persons were not supposed to know the petitioner. A heavy quantity of 'lahan' has been recovered from the spot. Hence, this Court does not find any extenuating circumstances to show the ex-facie innocence of the

petitioner vis-a-vis the allegations levelled against him. This Court also finds substance in the argument of the learned State Counsel that since a heavy recovery has been effected, therefore, the Police would require custodial interrogation of the petitioner; to find out the true dimensions of the crime of the petitioner. Hence, protecting the petitioner against his arrest, at this stage, would hamper the free and fair investigation by the Police as well.

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

September 01, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No