

S.No.110

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

CRM-M-29725 of 2020 (O&M)

Date of Decision:25.09.2020

Gurcharan Singh @ Sheela

.....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. Ranjodh Singh Sidhu, 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 pre-arrest bail in case FIR No.125 dated 18.07.2020 registered under Section 61 of The Punjab Excise Act 1994, at Police Station Khemkaran, District Tarn Taran.

The allegation against the petitioner is that on secret information, to the effect that the petitioner was having illicit liquor in his house and was indulging in illicit liquor trade, the Police conducted a raid at the house of the petitioner. On seeing the Police, the petitioner had run away from his house. However, during the raid, the Police had recovered 100 bottles of illicit liquor stored in a can. Accordingly, the present FIR has been registered.

Learned counsel for the petitioner has submitted that the case against the petitioner is totally concocted. Nothing has been recovered in presence of the petitioner. It is also submitted by counsel for the petitioner that there is no other case against the petitioner.

Notice of motion.

Mr. Hittan Nehra, Addl. AG, Punjab, accepts notice on behalf of the State.

Learned State Counsel, on instructions from ASI Major Singh, has submitted that there was a definition information against the petitioner qua his illicit liquor trade. Therefore, on raid, being conducted by the Police, 100 bottles worth of liquor have been recovered from the house of the petitioner, Police have got the photographs of the house as well as the recovered liquor on record. The Police are yet to get the true dimensions of the offence of the petitioner disclosed.

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.

Having heard counsel for the parties, this Court finds that there are specific allegations against the petitioner. The recovery has been effected from the house of the petitioner itself. Therefore, this Court does not find it to be a fit case to interfere so as to protect the petitioner against his arrest. Needless to say that this kind of spurious liquor is taking toll upon the Society. The recent incident in the State of Punjab has amply clarified the danger of the illicit liquor trade in which the petitioner is involved. Hence, the petitioner does not deserve concession of anticipatory bail.

Dismissed.

September 25, 2020
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(RAJBIR SEHRAWAT)
JUDGE

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