

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

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CRM-M No.31684 of 2020
DATE OF DECISION : 8th OCTOBER, 2020

Satish @ Tisa

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present : Mr. Abhimanyu Singh, 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 bail in case FIR No.0328 dated 28.09.2020 registered under Sections 120-B, 420, 467, 468 & 471 IPC and Section 61 of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) at Police Station Rajendra Park, District Gurugram.

The allegations against the petitioner, in brief, are that the police got secret information that the petitioner was making and also had stored the spurious liquor for the purpose of further selling, at a godown. Thereafter, the police conducted the raid at the specified place. During the raid the police found 518 boxes of illicit liquor containing unlabelled bottles. Besides this, two boxes, containing unsealed liquor bottles were also found at the place, showing that the process of manufacturing the

spurious liquor was still continuing. Besides this, the police also found 120 fake labels of the brand 'Old Monk' and 120 fake labels of brand 'Mcdowel No.1' which contain the seal 'sale in CSD only'. The godown in question was stated to be in possession of the petitioner being on lease with him. With these allegations the FIR has come into being against the petitioner.

The counsel for the petitioner has submitted that the case against the petitioner is totally concocted. During the previous year the petitioner was a licensee under the liquor contract. However, this year the petitioner has no concern with the liquor trade. The police created two more illicit liquor cases on the same date. Therefore, the name of the petitioner has been dragged in the case only because the petitioner happened to be lessee of the godown from where the alleged recovery has been effected. Otherwise two other persons were found present at the godown at the time of the alleged raid. The petitioner has no concern with the recovery effected from that place. The petitioner shall join the investigation as and when required by the police. Hence, the petitioner deserves to be protected against his arrest.

Notice of motion.

Mr. Rupinder Singh Jhand, Addl. AG, Haryana, accepts notice on behalf of the State.

Learned State Counsel, on instructions from ASI Sandeep Kumar, has submitted that the name of the petitioner is specifically mentioned in the secret information. When the police conducted raid at the named godown, which is in possession of the petitioner, the above said material was found present. Hence, there is absolutely no doubt that

the petitioner is indulging in trade of illicit and spurious liquor. The petitioner is not only causing loss to the State exchequer, rather, he has also put the life of the public at large at risk by putting this spurious liquor in the market. It is also submitted that there are four more similar cases against the petitioner. The police need the custodial interrogation of the petitioner to unearth the true dimensions of the involvement of the petitioner in illicit liquor trade. Hence the petitioner does not deserve any concession of anticipatory bail.

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.

Having considered the arguments of respective counsels and having gone through the case file, this court finds that there are specific allegations against the petitioner right from the stage of receipt of the alleged secrete information. The place, from where the heavy recovery, mentioned above, has been effected, is in possession of the petitioner on lease. Although, some other persons may have been arrested from the spot, however, prima facie, such a huge manufacturing of illicit and spurious liquor would not have been possible at the premises of the petitioner, except with his consent and due participation. Therefore, this court does not find any *ex-facie* innocence on the part of the petitioner vis-à-vis the allegations levelled against him. Besides this, the court finds substance in the argument of learned counsel for the State that the custodial interrogation of the petitioner is imperative. Since the recovery effected is very huge, therefore, the police would need the custodial interrogation of the petitioner to unearth the true dimensions of the involvement of the petitioner in the trade of illicit and spurious liquor. In view of this, protecting the petitioner against his arrest, at this stage, would hamper the free and fare investigation on the part of the police. Accordingly, this court does not find this to be a fit case to exercise its power under Section 438 Cr.P.C so as to protect the petitioner against his arrest.

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

8th OCTOBER, 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>