

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

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IN VIRTUAL COURT

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**CRM-M No. 35538 of 2020
Date of decision : 3.11.2020**

Anil Yadav

.....Petitioner

Vs.

State of Haryana

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Lupil Gupta, 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.503 dated 27.9.2020, registered under Sections 420, 272, 273 IPC, Sections 63 and 65 of Copy Right Act, 1957 and Sections 103 and 104 of Trade Marks Act, 1999, at Police Station Sector 7, Faridabad.

The case against the petitioner has emerged from the allegations that Inspector Jaivir Singh along with other officials was present at the turn of Sarvoday Hospital, Sector 8, Faridabad, when he received an information that co-accused Ravi is used to prepare spurious desi ghee in Shop No. 5102, Housing Board Colony, Sector 3, Faridabad, in the name of different reputed brands. If the raid is conducted then heavy quantity of spurious desi ghee along with other materials can be recovered. Accordingly, the said Inspector contacted Dr. N.D. Sharma of Food and Drugs Administration, Faridabad and requested him to reach near Sarvoday Hospital. Then the raiding team reached

the place mentioned by the informant. They entered the room where a person was preparing spurious desi ghee. On enquiry, he mentioned his name as Ravi son of Manohar Lal. Besides spurious deshi ghee, a huge quantity of wrappers and labels of different companies, boxes, empty tins and material for preparation of desi ghee and flavours etc. were recovered. The said Ravi was arrested by the police. He disclosed the name of the petitioner as the supplier of the material and the wrappers/labels for preparation of the desi ghee. This is how the petitioner is alleged to be involved in the present case. As per the further story of the prosecution, on the above information, a raid was conducted by the police against the petitioner as well. Although the petitioner had run away from the spot, however, the police found 19 wrappers/labels of one brand of desi ghee and 9 wrappers/labels of another brand of desi ghee; in the car of the present petitioner.

Arguing the case, the counsel for the petitioner has submitted that the petitioner is not connected with the crime at all. He has been shown involved in the case only on the basis of alleged disclosure statement of co-accused Ravi. The petitioner is not even known to the said co-accused Ravi. The petitioner has no connection with that person. Still further, it is submitted that the recovery allegedly made from the car of the petitioner is also fabricated. No independent witness was joined by the police at the time of alleged recovery from the car of the petitioner. Still further, it is submitted that even main accused, who was arrested from the spot, has been released on regular bail by the trial Court. The petitioner shall join the investigation.

Hence, the petitioner deserves the concession of anticipatory bail.

Notice of motion.

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

The counsel for the State, being instructed by ASI Bed Singh, has submitted that the petitioner's participation in the crime has been established more than prima facie. On being informed by the co-accused Ravi, the raiding party had tried to catch hold of the petitioner. However, he had fled from the scene, leaving behind his car. The car was found to be locked. Accordingly, the technicians from the Honda company were summoned by the raiding party. The lock of the car was opened by the technicians. Thereafter, the search was conducted in the presence of DGM, Milk Food Company. The fake wrappers and labels of the brand were recovered from the car of the petitioner, a fact which was verified by the DGM, Milk Food company as well. Hence, it is submitted that the recovery was effected by joining the independent witnesses. The police persons do not have any animosity with the petitioner as such. Therefore, there is no reason or occasion with the police to involve the petitioner in a false case. Still further, it is submitted that since the petitioner has been disclosed to be the active participant in the cartel of manufacturing of spurious desi ghee, therefore, the custodial interrogation of the petitioner would be required to unearth the true dimensions of the crime committed by the petitioner. The police have to inquire as to who the other persons are, to whom the petitioner's supply the fake wrappers, labels and other materials for manufacturing of the spurious desi ghee. The investigation of the case is at the initial stage. Hence, if the petitioner is granted protection against his arrest, at

this stage, then the free and fair investigation of the case would also suffer.

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 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 the police have effected a huge recovery of spurious desi ghee, wrappers, labels and empty tins and other materials related to the manufacturing of the spurious desi ghee from the arrested co-accused. The petitioner has been named by the said co-accused Ravi as supplier of the material, wrapper and labels etc. The police claims to have recovered some

of the fake material from the car of the petitioner in the presence of the technician of Honda Company, as well as, the DGM of Milk Food Company, whose fake wrappers and labels were recovered from the car of the petitioner. Hence, this Court does not find any ex-facie innocence on the part of the petitioner vis-a-vis, the allegations levelled against him. Still further, this Court finds substance in the arguments of learned counsel for the State that the police requires custodial interrogation of the petitioner to unearth the true dimensions of the involvement of the petitioner in manufacturing of the spurious desi ghee. Accordingly, if the petitioner is protected against his arrest, at this stage, then free and fair investigation of the case shall also be hampered. Hence, this Court does not find it to be a fit case to exercise its powers under Section 438 Cr.P.C, so as to protect the petitioner against his arrest.

In view of the above, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

3.11.2020

Ashwani

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