

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

CRM-M-36215 of 2020
Date of Decision: 17.12.2020

Kavinder ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rajesh Lamba, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Through Video Conferencing

JASGURPREET SINGH PURI, J.(ORAL)

The present petition has been filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.113, dated 19.03.2020, under Section 61 of The Punjab Excise Act, 1914 and Section 420 of IPC, 1860, registered at Police Station Kharkhoda, District Sonipat, Haryana.

As per the FIR, the police official who was present at Matindu Chowk bypass Kharkhoda for patrolling and crime investigation then a secret informer met him and informed that at the bypass walking towards Sampla Chowk, one Canter No. HR-39E-7760, whose driver is Vikram son of Ram Singh, is parked which contain illicit liquor and if raid is conducted then immediately he can be apprehended along with the liquor. Thereafter, ASI along with his companions reached the bypass and then found one Canter bearing the aforesaid number which was parked but no person was

present in the Canter and in the Canter boxes of liquor were there. For getting the information of liquor, the Excise Inspector was informed and after sometime Excise Inspector namely, Ashok Malik reached the spot. The Excise Inspector checked the liquor then 285 boxes of liquor, plastic bottle, XXX rum were written on the top but there was no label or sticker on the bottles and every box had 12 bottles plastic. The Canter was checked from inside but no document regarding pass or permit for liquor was recovered. The driver ran away from the spot taking benefit of the darkness.

Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR and it was on the basis of the disclosure statement of the aforesaid driver of the Canter namely, Vikram that his name has been nominated and therefore, he may be considered for the grant of anticipatory bail. He further submitted that the petitioner is not even the owner of the Canter and therefore, he has been falsely implicated in the present case. While referring to the other cases, which are pending and decided against the petitioner, he submitted that in one case he has been acquitted and in one case he has been granted anticipatory bail while three other cases are pending trial and in one case he has been convicted and therefore according to the learned counsel for the petitioner the pendency of those cases would not have any bearing in the present case. He has further submitted that no recovery is to be made from the petitioner and therefore, he is entitled for the grant of anticipatory bail.

On the other hand, Mr. Munish Sharma, AAG, Haryana has submitted that in pursuance of notice of motion order passed by this court, the State has filed a detailed affidavit of the Deputy Superintendent of Police, City Sonapat. Referring to the aforesaid affidavit, learned State counsel has submitted that during the investigation this case was inspected

and the accused driver namely Vikram was arrested in this case. Thereafter, on interrogation the aforesaid Vikram suffered a disclosure statement and disclosed that he is employed as a driver with his co-villager namely, Kavinder @ Bunta (petitioner), who is indulging in the business of illicit liquor. The said Vikram further stated that the petitioner used to call him telephonically to the go-down in the village Sisana and used to handover the Canter loaded with liquor and used to send him to Ghaziabad, Uttar Pradesh for unloading the illicit liquor and he used to take the said Canter along with liquor to Ghaziabad, Uttar Pradesh at difference places as per the instructions of the petitioner where the known persons of the petitioner used to meet him as per telephonic instructions of the petitioner and took the Canter at their places. After unloading the liquor from the said Canter, they used to handover the Canter to him. The aforesaid Vikram further stated that on 19.03.2020, when he was going to Ghaziabad, Uttar Pradesh for transporting 258 boxes of liquor loaded by Kavinder (petitioner) in Canter bearing No. HR-39E-7760, after parking the said Canter a little ahead of Matindu Chowk bypass Kharkhoda towards Sampla road, he went to ease himself and in the meantime the police vehicle reached there and started checking the Canter and he fled away. The aforesaid Vikram further stated that only the petitioner can disclose as to from whom he has brought the aforesaid illicit liquor.

Learned State counsel has further submitted to the deposition made in the affidavit filed by the State that the matter was serious in nature and the petitioner has committed a grave offence. The accused Vikram was only a driver of the petitioner and it is the petitioner only who used to bring illicit liquor and sent it to Ghaziabad, Uttar Pradesh by loading it in the said Canter and for that purpose the accused Vikram was employed by him as a

driver. The petitioner was indulging in smuggling of illicit liquor and the liquor seized from the spot was without any hologram/label/mark and by selling such kind of liquor, the petitioner has also caused loss to the State Exchequer. As such custodial interrogation of the petitioner is required to find out as to from where he had procured such a huge quantity of illicit liquor without any permit and to whom, he used to sell the said liquor and he is also required to be interrogated with regard to involvement of other persons also with him and that the investigating agency wants to unearth the actual facts and therefore, the petitioner does not deserve the concession of anticipatory bail.

It is further submitted in the affidavit that the investigation is still in progress and that the petitioner is also a habitual offender. Reference has been made to six other FIRs which are pending against the petitioner. One FIR pertains to Sections 294, 323, 506, 427, 452, 509 and 34 IPC in which the petitioner has been acquitted. In other FIR registered under Sections 420, 465, 467, 468, 471 and 120-B IPC, the petitioner is under trial. In another FIR, the petitioner stands convicted on 06.08.2010 under Sections 188 IPC and 61/1/14 of the Excise Act. In another FIR, under the Excise Act, the trial is in progress. In another FIR, again under the Excise Act, the trial is in progress whereas, in other FIR under the Excise Act, the petitioner was granted anticipatory bail by the learned Additional Sessions Judge, Sonipat.

Learned State counsel has submitted that it is a case where huge recovery of illicit liquor was recovered from the Canter and according to the statement of Vikram, the illicit liquor belongs to the petitioner and he had been transporting the said illicit liquor earlier also. The learned State counsel therefore submitted that it is a case where custodial interrogation of

the petitioner is required to further ascertain the involvement of the petitioner in the present case and also in the other cases for dealing with illicit liquor and therefore has opposed to the grant of anticipatory bail to the petitioner.

I have heard the learned counsel for the parties and have perused the record.

The factual position which has emerged from the present case is that although the petitioner was not named in the FIR but on the basis of disclosure statement of the driver of the Canter, his name was nominated. It is true that the disclosure statement of the co-accused cannot be used against the petitioner in evidence but it is equally true that other various factors are also to be taken into consideration while considering the grant of anticipatory bail especially recovery in pursuance of disclosure statement. It is a settled law that while considering the grant of anticipatory bail, a balance has to be struck between the liberty of an individual on the one hand and the likelihood of his influencing the witnesses or facts to take out the truth from the petitioner is to be seen. In the present case, the driver of the Canter has categorically disclosed that it was at the behest of the petitioner that he has been transporting the illicit liquor not only in the present case but in the other cases also. Furthermore, the petitioner is involved in other cases pertaining to the Excise Act and in one case he has even been convicted. The submissions made by the learned State counsel that the custodial investigation of the petitioner is required in view of the fact that he is a habitual offender and his involvement has to be ascertained only on the basis of his custodial investigation carries some weight.

Therefore, in view of the totality of the circumstances of the present case, I do not deem it fit to be just and proper to grant anticipatory bail to the petitioner. Accordingly, the present petition is dismissed.

However, it is made clear that the observations made hereinabove are purely for the disposal of the present petition and it would not reflect anything on the merits of the case.

(JASGURPREET SINGH PURI)
JUDGE

December 17, 2020

Manpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No