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

CRM-M-10633-2021 (O&M)

Date of decision: 21.05.2021

Rajeev Joshi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ajaivir Singh, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.201 dated 31.07.2020 under Sections 302, 328, 120-B IPC read with Section 61/1/14 of Excise Act, registered at Police Station City Batala, Police District Batala.

Learned senior counsel for the petitioner, at the very outset, submits that the petitioner is aged about 54 years and he is dealing in the

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business of paints, thinner and other industrial chemicals like varnishes etc. through the firm by the name of M/s R.C. Joshi and Company. Learned senior counsel has referred to GST Registration Certificate as well as No Objection Certificate issued by the Additional District Magistrate, Ludhiana permitting the petitioner to do the said business. It is further submitted that the petitioner has no such history of involvement in criminal case and his family is doing the aforesaid business for the last about 40 years. It is also submitted that as many as six FIRs have been registered on account of hooch tragedy, which occurred in Punjab and many persons have died. Learned senior counsel has referred to the FIR, which was registered by the police after recording the statement of Toti @ Buta Ram and Bhupinder Kumar that some persons named in the FIR have consumed poisonous liquor or alcohol supplied by some unknown persons and have died. The FIR was initially registered under Sections 304, 320 IPC read with Section 61/1/14 of Punjab Excise Act. During the course of investigation, the police added offence under Section 302 IPC.

Learned senior counsel has argued that it is case of the prosecution that legal heirs of the deceased persons informed the Investigating Officer at the first instance that spurious liquor, which was consumed by deceased persons, was supplied by Darshana Rani, Rajan, Triveni Chohan, Johny, Dharminder, Heera, Harpreet Singh @ Happy, Badal, Gurbinder Singh and George. Thereafter, samples of recovered illicit liquor were sent to FSL/Chemical Examiner and on receiving the report, offence under Section 302 IPC was

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added. It is further submitted that during the investigation, the police recorded the sequence of disclosure statements. Thereafter, the police arrested accused George, Satnam Singh @ Satta, Shamsher Singh @ Shera and Harjeet Singh and recorded their disclosure statements and they nominated Avtar Singh, Ravinder Singh and Rajeev Joshi as accused in this case and the petitioner was arrested on 03.08.2020. It is also submitted that only evidence, which has come against the petitioner is either the disclosure of his co-accused or his own disclosure statement, which was recorded by the police during the custodial investigation, in which it is stated that he had sold three drums of methyl alcohol to one Ravinder for a sum of Rs.75,000/- and delivery was taken in a small commercial vehicle. It is further submitted that in pursuance to the disclosure of either of the co-accused or as per the own disclosure of the petitioner, no further recovery was effected from the petitioner, therefore, it will be a debatable issue whether such disclosure is admissible in evidence against the petitioner.

Learned senior counsel has further referred to the order passed by the Coordinate Bench, vide which the petitioner was granted the concession of regular bail in FIR No.109, which was an offshoot of the same incident. It is further submitted that while granting bail in the said FIR, it was observed that the petitioner was involved on the basis of disclosure statement of co-accused Avtar Singh and Ravinder Singh. It was further observed that it will be a debatable question regarding involvement of the petitioner in manufacturing

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and supply of illicit poisonous liquor for consumption as well as evidentiary value of disclosure statement, which is under challenge, to be decided during the trial. It was also observed in the said order that no recovery was made from possession of the petitioner after his arrest.

Learned senior counsel has also referred to two other orders passed by the Additional Sessions Judge, Gurdaspur dated 21.12.2020, vide which the petitioner was granted the concession of bail in FIR No.218 and FIR No.223. It is thus argued that there is no connecting evidence against the petitioner that spurious liquor was prepared by mixing methyl alcohol, which was allegedly sold by the petitioner to co-accused Ravinder, was mixed with other contents and it was put in small pouches or bottles for further sale to the deceased persons. It is further argued that since in pursuance of his own disclosure statement of the petitioner, no recovery was effected, therefore, it is not admissible in evidence. It is also submitted that the petitioner is running his business in Ludhiana and has no business operation either in Batala, District Gurdaspur or Tarn Taran.

In reply, learned State counsel, on the basis of affidavit of Deputy Superintendent of Police, Sub Division City Batala, Police District Batala, has opposed the prayer for bail on the ground that an SIT was constituted and it was found that 07 persons namely Triveni Chauhan, Johny Kumar, Darshana Rani, Rajan, Dharminder, Hira Singh and Gandhi were found involved in selling the illicit liquor. It is further stated that initially, Johny Kumar was arrested and on

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his disclosure statement, Badal was nominated as an accused. Thereafter, on the basis of disclosure statement of accused, seven other persons, as named above, were nominated. It is also stated that later, on the disclosure statement of other persons, Satnam Singh @ Satta, Shamsheer Singh @ Sheera and Harjit Singh along with Avtar Singh, Ravinder Singh @ Pinka @ Papa and petitioner Rajiv Joshi were nominated as accused. It is further submitted that some recovery was effected from the co-accused.

Learned State counsel has not disputed that as per statement of the legal heirs of deceased, it was Triveni Chauhan and others, who were selling the liquor in pouches for Rs.50/- each.

Learned State counsel, on a Court query, could not dispute that no recovery was effected from the petitioner and SIT did not find any evidence that the petitioner has any meeting of mind with other accused of preparing the spurious liquor, as no call details of the petitioner matched with other accused, who were actively involved in selling the illicit liquor in small quantity.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

- (i) Admittedly, the petitioner is not involved in any other case prior to registration of six FIRs, out of which, he has already been released on bail in three cases.
- (ii) Only evidence against the petitioner is disclosure statement of co-accused Ravinder Singh @ Pinka @ Papa that he has purchased

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three drums of methyl alcohol, which was later on supplied by him to other accused person in different districts to prepare spurious liquor.

- (iii) In pursuance to disclosure statement of co-accused or the alleged disclosure of the petitioner himself, no recovery was effected from the petitioner, therefore, it will be a matter of trial whether such disclosure is admissible in evidence.
- (iv) The allegation against the petitioner that he had sold three drums of methyl alcohol to Ravinder Singh, whereas it has come in the statements of legal heirs of deceased that spurious liquor was sold in small pouches/bottles for Rs.50/- by another set of accused i.e. Triveni Chauhan and others.
- (v) There is no evidence collected by SIT that the petitioner had any knowledge that the methyl alcohol will be used for preparing spurious liquor or there was any meeting of mind of the petitioner with other co-accused.
- (vi) No evidence has come on record to show that the petitioner has himself was an instrument in preparing the spurious liquor. Even the SIT could not find any call details of the petitioner with other accused to show that he was actively involved with them.

Considering the fact that the petitioner is aged about 54 years; he is in custody since 03.08.2020; he has no previous history of involvement in any

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other case; challan stands presented and charges are yet to be framed and also in view of the fact that in three FIRs, noticing the aforesaid facts, the petitioner has already been released either by this Court or by the Court of Sessions and also in view of COVID-19 situation in the country, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

21.05.2021
vishnu

**[ARVIND SINGH SANGWAN]
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No