

CRM-M-21828-2021,
CRM-M-22561-2021 and
CRM-M-26232-2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21828-2021
Date of decision: 20.07.2021

(I)
Rakesh Kumar @ Baba

.....Petitioner (s)

V/s.

State of Punjab

.....Respondent(s)

CRM-M-22561-2021

(II)
Narinder Lal @ Rinku

.....Petitioner (s)

V/s.

State of Punjab

.....Respondent(s)

CRM-M-26232-2021

(III)

Dara Khan

.....Petitioner (s)

V/s.

State of Punjab

.....Respondent(s)

CORAM: - HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Dharam Bir Bhargav, Advocate, for the petitioner
in CRM-M-21828-2021.

Mr. Amandeep Singh Manaise, Advocate, for the petitioner
in CRM-M-22561-2021.

Mr. Manjinder Singh Saini, Advocate, for the petitioner
in CRM-M-26232-2021.

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Mr. Randhir Singh Thind, Deputy Advocate General, Punjab.

JASGURPREET SINGH PURI, J.

These three petitions are taken up together since the same are arising out of the same FIR, filed under Section 439 Cr.P.C for grant of regular bail to the petitioners in case bearing FIR No. 28 dated 13.04.2021, under Sections 379/380/328/411/420 of Indian Penal Code, 1860 and Sections 61/61-A/63/78/1/14 of the Punjab Excise Act, 1914, registered at Police Station Talwara, District Hoshiarpur.

All learned counsels for the parties have agreed that all the three petitions can be disposed of by way of single order since the FIR is common.

Facts in the present case are taken from CRM-M-21828-2021. The present FIR came to be lodged on the basis of a Tip-off which was received by the police officials from an informer that one Gurvinder Singh son of Sukhdev Singh who is a Tanker, Dara Khan (Petitioner in CRM-M26232-2021), Rakesh alias Babu (Petitioner in CRM-M-21828-2021), NarinderLal @ Rinku (Petitioner in CRM-M-22561-2021), Gurcharan Singh alias Sinta and Dinesh have formed a gang and these persons steal spirit from tankers and prepare fake and poisonous liquor and sell it to innocent people by misrepresenting it as good quality liquor. Prior to this also many lives have been lost in the areas of Amritsar and Taran Tarn due to fake and poisonous liquor prepared from the spirit and now these people are taking spirit from the tankers and filling it up in plastic cans through pipes. The police party

conducted a raid and all the petitioners were apprehended on the spot on 13.04.2021.

Mr. R.K. Handa, Advocate, Mr. Amandeep Singh Manaise, Advocate, and Mr. Manjinder Singh Saini, Advocate have addressed joint arguments by stating that it is a case where the police had actually planted the allegations on the petitioners. It was submitted that going by the FIR itself the basic ingredients of Sections 379, 380, 328 as well as 420 were not made out. It was submitted that as per the allegations these persons were either on the canter or they were in their car when spirit was being taken from canter and filled into the cans. No one had reported any kind of theft from any of the canter and, therefore, the basic ingredients of theft are not fulfilled. They further submitted that even the ingredients of Section 420 IPC were not fulfilled because there was no cheating involved and there was no complaint whatsoever from anybody else. They have submitted that since there was an episode in the State of Punjab about two years ago in the districts of Amritsar and Taran Tarn where illicit liquor was sold and many people had died due to that, it was only on the pretext of the aforesaid episode that the petitioners were apprehended. They have submitted that the present petitioners or even the other accused were never involved in the entire episode and were not accused in the FIR of the aforesaid episode of District Amritsar and District Taran Tarn. They have further submitted that even otherwise also the confiscated spirit was sent to FSL Laboratory and as per the report of the FSL it was found to be only ethyl alcohol and no toxicity was found in the same and it was a plain spirit and, therefore, the prosecution story that it was a poisonous substance got

demolished after the receipt of the FSL report. They have further referred to Annexures P-2 to P-6 of the bail applications filed by the Dara Khan in CRM-M-26232-2021 that in fact Dara Khan had a valid license for import/transport of ethyl alcohol and even the tax invoice and the permits have also been attached with the paper-book, which shows that the transportation of ethyl alcohol was done under valid permit and in accordance with law. Though, the ingredients which were available with the prosecution were only with regard to theft but no owner of any of the material or of a canter has reported anything regarding theft and, therefore, even those provisions would not apply to the present case. The learned counsel further submitted that so far as Rakesh Kumar is concerned, he was involved in two other cases under Excise Act and NDPS Act way back in the year 2014 but according to the learned counsel for the petitioner he has been acquitted in one of the cases. So far as Narinder Kumar is concerned, he was involved in as much as 15 cases but all of them pertained to Excise Act and according to the learned counsel for the petitioner he has been acquitted in most of the cases. So far as the case of Dara Khan is concerned, he is not involved in any other case at all. They have further submitted that all the petitioners are in custody since 13.04.2021 and investigation of the case is already complete and no recovery is to be effected from the petitioners and challan has been presented on 09.06.2021 and even the charges have already been framed on 12.07.2021. They have submitted that the trial of the case would take long time and therefore, they may be considered for the grant of regular bail.

On the other hand, Mr. Randhir Singh Thind, learned Deputy

Advocate General, Punjab has submitted that it is a case where the petitioners were found stealing spirit from tanker and thereafter, they have also suffered disclosure statements with regard to the same. He has also stated that reply has been filed in two of the cases in Rakesh Kumar's case and Narinder Kumar's case, wherein it has been stated that Rakesh Kumar was involved in two other cases, whereas Narinder Kumar was involved in 15 other cases and has therefore, opposed the grant of regular bail to the petitioners.

I have heard the learned counsel for the parties.

The custody periods of the petitioners are not in dispute and it is also not in dispute that the investigation of the case is complete and the challan stands presented before the competent Court and even the charges have been framed on 12.07.2021. According to learned State counsel, as per the FSL report it has been found that the confiscated material was ethyl alcohol and as per the documents attached with the case of Dara Khan's case the permit and transport license including the various permits of spirit (ethyl alcohol) has been attached. Furthermore, it is not the case of the State that in case the petitioners are released on bail then they may influence any witness or may tamper with any evidence or may flee from justice. It is not the case of the State that any further recovery is to be effected from the petitioners. The trial of the case may take long time and therefore, the present bail applications can be allowed in the light of the circumstances of the present case considering the stage of the case as well.

Therefore, without commenting on the merit of the case and considering the totality of circumstances, all the three petitions are allowed.

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The petitioners in all the three petitions shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petitions only.

All the learned counsels have also pointed out that at the time of presentation of challan the provisions of Section 61-A was also added. In two of the petitions i.e. in Narinder Kumar and Rakesh Kumar the provisions of Section 61-A has not been added in the headnote, whereas, the same has been stated in the headnote of the third petition i.e. Dara Khan's case. Learned State counsel does not dispute the same. It is directed that in two petitions i.e. in Rakesh Kumar and Narinder Lal's case in the headnote of the bail petition the provisions of Section 61, 63, and 78 of Punjab Excise Act be read as Sections 61, 61-A, 63, 78/1/14 in view of the fact that the same provisions have been added at the time of presentation of challan.

**(JASGURPREET SINGH PURI)
JUDGE**

20.07.2021
rakesh

whether speaking:	Yes/no
whether reportable:	Yes/no