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

CRM-M-24635 of 2021
Date of Decision:22.12.2021

Anil Kapoor

...... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Naveen Malik, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana

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AMOL RATTAN SINGH, J.

On 01.07.2021 the following order had been passed by this court in this petition:-

> "Case heard via video conferencing.
>
> By this petition, the petitioner seeks the concession of 'anticipatory bail' under the provisions of Section 438 of the Cr.P.C., upon FIR no.45, dated 05.02.2021, having been registered at Police Station Sector 5, Panchkula, alleging therein the commission of an offence punishable under Section 20 of the NDPS Act, 1985, read with Sections 7 and 20 of the Cigarettes and other Tobacco Products Act, 2003.
>
> Learned counsel for the petitioner submits that the petitioner is Anil Kapoor and not Anil Kumar who is named in the FIR, and whose premises are stated to have been raided by the police, with various 'spurious brands' of cigarettes, as also charas, allegedly found there; and the petitioner has only been named in an alleged disclosure statement made by the aforesaid Anil Kumar, in police custody, which

would not be admissible in evidence.

She further submits that the petitioner has been named by the aforesaid Anil Kumar who earlier had named one Munna @ Pradeep Jain even as per his own disclosure statement (Annexure P-4), with the petitioner being so named only because he had a dispute with Anil Kumar over the supply of biris of which the petitioner is a registered wholesaler.

Upon query, she submits that the dispute was because Anil Kumar had claimed to have purchased spurious cigarettes from the petitioner who does not deal in cigarettes but deals in biris.

Notice of motion.

Mr. Manish Sharma, learned AAG, Haryana, accepts notice on behalf of the respondent State at the asking of the court.

Adjourned to 03.08.2021.

In the meanwhile, without making any comment on the actual merits of the case, the petitioner is directed to join investigation within one week and upon him so joining if he is sought to be arrested, he would be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall, further, abide by all the conditions stipulated in Section 438 (2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation."

Thereafter on 17.08.2021 the following order had been passed, after reproducing the order earlier passed:-

"Today learned State counsel submits, on instructions, that though the petitioner has joined investigation, he is not cooperating, inasmuch as he is not revealing the source of the purchase of the *charas.*

Whereas I do not know how any person can be forced to implicate himself, but be that as it may, since it is also stated by learned State counsel that the petitioner was in constant touch with the aforesaid Anil Kumar, a gazetted officer is directed to file a reply to the petition, annexing therewith all phone call details between the petitioner and Anil Kumar, with of course it to be noticed that learned counsel for the petitioner had submitted on the last date of hearing that Anil Kumar had named the petitioner because there was a dispute amongst them as regards selling of spurious brands of cigarettes (by Anil Kumar).

Adjourned to 22.09.2021.

Interim order to continue till that date only and specifically."

A reply having been filed by the ACP, Panchkula, dated 20.09.2021, thereafter, learned State counsel had admitted, as recorded in the order dated 22.09.2021, that the said reply does not deal with any "legal dealings" between the petitioner and his co-accused Anil Kumar, as regards the sale of cigarettes and *beeris,* (with Anil Kumar allegedly selling spurious brands of cigarettes due to which a dispute was alleged to have arisen between him and the petitioner, as had been contended earlier by learned counsel appearing for the petitioner).

However, it was also recorded in that order that as per the call details record annexed with the reply, there were constant phone calls between the petitioner and the Anil Kumar and consequently a specific query was made by this court to learned counsel for the petitioner as to whether there was any document available as regards any "legal dealings" between the petitioner and Anil Kumar, pertaining to the sale of cigarettes/*beeris*.

In response thereto, learned counsel had submitted that the petitioner only had bills/cash memos issued by him in the name of Anil Kumar.

This court was therefore in the process of in fact dismissing the petition at that stage itself, in view of the fact that bills/cash memos are something that is completely in the hands of the persons issuing him.

However, hearing in the matter had still been adjourned on the request of learned counsel for the petitioner, who submitted that she wished to place on record documents to show that orders were placed between Anil Kumar and the petitioner for supply of *beeris.*

Counsel for the petitioner thereafter having filed CRM-33029 of 2021, but not having produced the original documents as were sought to be relied upon in the said application, hearing in the matter had been adjourned, with learned State counsel having sought further time to verify the documents as had been annexed with the said application.

On 24.11.2021 the following order had been then passed by this court in this case:-

> "It is to be observed that on 02.11.2021 it had been inadvertently stated in the order that counsel for the petitioner had sought time to verify the documents as have been annexed as Annexures P-9 to P-15 with CRM no.33029 of 2021, whereas the said application was filed by the petitioner himself and consequently it was the learned State counsel who had actually sought time to verify the same on 04.10.2021.
>
> In reply to the said application, an affidavit dated 18.11.2021 has been filed by the ASP, Panchkula, which is ordered to be taken on record.
>
> Learned State counsel points to the verification reports

pertaining to the aforesaid documents, as have been annexed as Annexures R-1 to R-4 with the affidavit.

As per the said affidavit, it has been verified that the firm of the petitioners' wife, (with the petitioner having been authorized by his wife to sign bills etc.), was in fact purchasing bidis from different suppliers in U.P., West Bengal and Chandigarh.

However, it is seen that as regards sale of any such products by the petitioner to his co-accused Anil Kumar (the petitioner being Anil Kapoor), there is only one single copy of a tax invoice as has been annexed as Annexure P-10 with CRM no.33029 of 2021, from which learned State counsel points out that the copy supplied to the investigating agency in fact did not carry any date on it and on the photocopy containing what seems to have been originally hand written on that invoice, the date "9/1/21" has been added with a pen subsequently.

Learned counsel for the applicant-petitioner however refutes the same.

She further reiterates that in fact there was a dispute between the petitioner and Anil Kumar, that Anil Kumar was selling products other than what the petitioner had sold to him though he was purporting those products to have been sold by the petitioner to him, and consequently three telephonic calls were exchanged between the petitioner and Anil Kumar during that period (on account of that dispute) and it is only on account of that dispute that the petitioner has been named by Anil Kumar as a coaccused as regards charas stated to have been recovered from the house of Anil Kumar by the investigating agency.

Adjourned to 10.12.2021, to enable learned counsel for the petitioner to place on record the GST & income tax returns submitted by the petitioner well before today, pertaining to the bill/invoice dated 09.01.2021, i.e. the date on which the tax invoice (copy Annexure P-10) is purported to have been issued.

Yet, even having observed as herein above, eventually the matter boils down to whether or not the statement of Anil Kumar, as made to the police that it was the petitioner who had actually sold charas to him, would be sufficient to deny bail to the petitioner or not, even in terms of Section 37 (1)(b) (ii) of the NDPS Act, 1985.

If the said GST return and income tax return are not placed on record well before that date, or counsel for the petitioner does not appear on that date or seeks and adjournment, the interim order would stand vacated on that date itself, with no further order required to be passed in that regard by this court.

Interim order to continue till that date only and specifically."

On the next date of hearing, i.e. 10.12.2021, counsel for the petitioner had essentially reiterated all that she had argued earlier, to the effect that the petitioners' name having been disclosed only in an alleged disclosure statement made in police custody by his co-accused Anil Kumar, it was not admissible in evidence and that even if it was so disclosed, it was only on account of the dispute between the two of them as regards sale of unbranded cigarettes by Anil Kumar, which allegedly were supplied by the petitioner but which actually were not so supplied.

Learned State counsel of course referred to the two replies filed on behalf of the respondent State, by the ACP, Panchkula, to submit that with there being constant "telephonic conversations" between the petitioner (Anil Kapoor) and Anil Kumar, as per call details records of their mobile phones (on January 06 and 11, 2021 and February 01, 2021), before the petitioner supplied *Charas* (cannabis), and Anil Kumar having disclosed that the petitioner had in fact supplied him 6 kgs. of the substance, the petitioner cannot be admitted to bail even in terms of Section 37 of the Act of 1985.

Having considered the matter, it is first to be seen that as recorded in the order dated 24.11.2021, even as rgards the tax invoice annexed by the petitioner with CRM-33029 of 2021 (taken on record as Annexure P-10 with the petition), the copy of that invoice given to the investigating agency (produced in court by learned State counsel), was seen to be a photocopy of Invoice No.242, with the date "9/1/21" written <u>on the photocopy with a pen</u>. Thus, obviously the original document (shown to be a tax invoice/bill) did not carry any date on it, with the date having subsequently been written on a photocopy with a pen containing blue ink.

The said tax invoice therefore could not be accepted by this court to be a valid invoice (for the purpose of this petition), and was possibly one which was simply created later to show that the petitioner was selling *beeris* to Anil Kumar.

Though other tax invoices have been annexed alongwith the said application (taken on record as Annexures P-11 to P-16 with the petition), those tax invoices were issued by Bodrul Enterprise, Murshidabad, West Bengal, showing a supply of handmade branded *beeris* to the petitioner.

Thus, in a nutshell, as regards any genuine transaction of the <u>sale</u> of cigarettes/*beeris* <u>by the petitioner</u> to Anil Kumar, it cannot be said (again for the purpose of this petition alone), that any valid document has been brought to the notice of this court.

In any case, the issue before this court is the recovery of 5 kgs. and 175 grams of *Charas* from Anil Kumars' premises, which, as per the alleged disclosure statement of Anil Kumar, was supplied to him by the petitioner, with the disclosure statement being backed up, as per the investigating agency, with the phone calls stated to have been exchanged between the petitioner and Anil Kumar on three different dates prior to recovery of that *Charas* (the recovery being on 05.02.2021).

Though otherwise normally this court would admit an accused to bail if the only allegation against him was an alleged disclosure statement made in police custody, but looking at all the facts enumerated hereinabove together, I would find it difficult to hold that there is no *prima facie* case also against the petitioner to admit him to bail even in terms of Section 37 (1)(b)(ii) of the NDPS Act, 1985.

Consequently, this petition is dismissed and the interim order passed on 01.07.2021 is hereby vacated.

However, it is made absolutely clear that no observation made by this court in any of the orders passed in this petition would be taken into consideration as regards the merits of the case, for or against the petitioner or any of his co-accused, with all such observations having been made only in the context of a petition filed under the provisions of Section 438 of the Cr.P.C., and the investigation would continue as per the evidence gathered, and led before the trial court in any trial that may thereafter ensue.

December 22, 2021 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**

Whether speaking/reasoned Yes

Whether Reportable No