

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

201(5)

CRM-M-20663-2020 (O&M)

Decided on : 13.01.2021

Jitender and another

. . . Petitioner(s)

Versus

State of Haryana and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate, for the petitioner(s).

Mr. Rajiv Goel, DAG, Haryana
assisted by SI Naresh.

MANJARI NEHRU KAUL, J. (Oral)

The petitioners are seeking issuance of directions to official respondents to give them a weeks' notice in case they are sought to be arrested in any case pertaining to offences under the **Excise Act etc.** for recoveries allegedly effected by the police in various cases pertaining to illegal liquor in District Sonipat. A further prayer has also been made that the official respondents be directed to issue one week prior notice under Section 160 Cr.P.C. to the petitioners in case their presence is required in any case registered under the **Excise Act etc.** at District Sonipat.

The aforementioned prayer has been made *inter alia* on the ground that the police is trying to implicate the petitioners in false cases pertaining to illicit liquor and theft of liquor from a godown owned by their mother, which had been given to the Excise Department and Police officials to store case property i.e. liquor, recovered by them in various cases. It has been submitted that petitioner No.2 – Bhupender had made a complaint against the police officials, who had been pilfering the case property stored

in their godown and it was on account of the aforementioned grudge which

the police officials were nursing against the petitioners, that false cases are being filed against them. Learned Sr. counsel for the petitioners in support of his submissions has placed reliance upon the judgment of the Apex Court rendered in **“Shri Gurbaksh Singh Sibbia and others Vs. State of Punjab, 1980(2) SCC 565”**.

Learned Sr. counsel has thus prayed that the interim order dated 17th September, 2020, passed by the coordinate Bench of this Court be made absolute vide which investigating agency had been directed that in case they were contemplating registration of a criminal case against the petitioners pertaining to theft of liquor, an advance notice of 07 days be issued to them, for availing the legal remedies as may be available to them under the law.

The said prayer of the learned Sr. counsel has been vehemently opposed by the learned State counsel by urging that the petitioners are persons of criminal antecedents and part of a large liquor mafia operating in this part of the country, which remained active even during the nationwide lockdown imposed following the outbreak of COVID-19 pandemic. It has been submitted by the learned State counsel that during their interrogation in the various cases registered against them, the complicity of the petitioners in the liquor syndicate has come to the fore and in case their prayer for issuance of one weeks' prior notice is given, in the eventuality of they being sought to be arrested for offences under the Excise Act etc., there is every likelihood that the petitioners would indulge in not only destruction of crucial evidence but also fabrication of evidence in their favour.

Heard.

It would be pertinent to notice that the petitioners are seeking concession of blanket bail not only with respect to offences under the Excise Act but also qua offences under other various Acts, as is evident

from the language and expression used in the prayer clause i.e. '**Excise Act etc.**'.

Learned Sr. counsel though has placed heavy reliance on Sibia's case (supra), however, it would not come to his rescue, as the Supreme Court in Sibia's case (supra) categorically observed that the concession of anticipatory bail, which the petitioners in the instant case are seeking by way of a blanket order, would cause hurdles during investigation of non-bailable offences carried out by the investigating agency. Still, further the Supreme Court in “**Adri Dharan Das Vs. State of West Bengal, (2005)4 SCC 303**”, while referring to and discussing Sibia's case (supra) expressed serious reservations about giving a blanket cover to a person so as to protect him from any and every kind of an unlawful activity or an accusation, which could be committed by him subsequent to such order. The Supreme Court as recently as in “**Union of India Vs. Padam Narain Aggarwal, 2008(4) RCR (Criminal) 665**”, reiterated the law, which had been laid down by the Constitution Bench in Sibia's case (supra) and also in Adri Dharan's case (supra) and held that any directions given by the Court with respect to the imposition of condition before effecting arrest of a person would make the statutory provisions under the Code ineffective, meaningless and nugatory. The Supreme Court categorically laid down that no directions could be given to the investigating agency for giving prior notice, in case a person was sought to be arrested, as it would not be in consonance with the law.

In the wake of the observations and the law laid down by the Supreme Court and also the submissions made by the learned State counsel, wherein, the prayer of the petitioners has been opposed, this Court is of the opinion that in case the petitioners are fearful of their likely false implication in cases under the Excise Act etc., there is no bar to the

petitioners to challenge the same before an appropriate forum, in the eventuality of registration of any such cases.

In view of the above discussion, this Court is not inclined to make the interim order dated 17.09.2020, absolute as it would amount to interfering and curtailing the authority of an Excise Officer under the Excise Act and imposition of conditions would be against the mandate of law.

Petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

January 13, 2021

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*