

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

**CRM-M-25859-2020
Date of decision: 22.09.2021**

Sultan

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Naveen Sharma, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No. 52 dated 02.03.2019, registered under Section 61(i)(a) of the Punjab Excise Act, 1914 at Police Station Salem Tabri, District Ludhiana.

On 04.11.2020, it was ordered that no coercive action shall be taken against the petitioner, however, he was not permitted to join investigation. Thereafter, vide order dated 21.12.2020, the petitioner was directed to appear before the Investigating Officer and join investigation.

On 23.11.2020, the following order was passed:

“In pursuance of order dated 4.11.2020, the Director, Bureau of Investigation, Punjab and Additional Chief Secretary (Home) have joined through video conferencing.

During the course of arguments it transpires that as per the affidavit dated 2.11.2020 of the Chemical

Examiner, Punjab, Kharar, the quantitative as well as qualitative tests under Section 61 of the Punjab Excise Act are conducted by the Chemical Examiner in the State of Punjab. It is further stated that the qualitative test is performed only in case where spurious alcohol samples or the samples received from the distilleries are received. It is further stated that for conducting the qualitative tests, the labs need pre-request, along with sample. In the present case, the quantitative analysis was done, as per the report dated 17.1.2020.

Learned State counsel has further submitted that in the absence of any specific directions by the Court or by the Excise Department or by the Police Department, the quantitative tests are not performed.

Looking into the facts of the present FIR, the police received a secret information that petitioner-Sultan is transporting the liquor meant for sale in Chandigarh or Haryana and on the basis of the said information, a raid was conducted. However, the petitioner managed to escape from the place of recovery and 24 bottles of liquor mark 'Royal Stag' and 24 bottles of liquor mark 'All Seasons' was recovered from the car. The said liquor was meant for selling in Chandigarh and Haryana.

On a Court query, as to why in all the cases, both the quantitative and the qualitative tests are not performed and in a given case, if an accused by filling spurious liquor and putting a mark of a branded liquor sells it in the market by showing that the same was meant for sale in other State than Punjab, it cannot be said that in such a case direction by the Court or the Excise Department or by the Police Department is required as it is the duty of the Police Department/Excise Department to get both the tests conducted to find out

the contents by conducting quantitative and qualitative tests.

It is worth noticing here that the qualitative tests are performed by the lab by way of a systematic analysis to identify the contents of the sample, i.e. to say such test discloses contents of the liquor if it is spurious or unfit for human consumption, whereas the quantitative analysis is done to determine the absolute or relative substance present in the sample, i.e. to find out the percentage of alcohol/ ethyl alcohol as in case of spurious liquor high percentage of ethyl alcohol can be dangerous to life.

It is also worth to notice here that the Hon'ble Supreme Court in case **Thana Singh Vs. Central Bureau of Narcotics**, 2013 (1) RCR (Cr.) 861, while dealing with the cases of narcotic drugs, has issued guidelines/directions to the States and it has been specifically directed that the State governments will establish Forensic Science Labs for conducting the quantitative and qualitative tests. However, it seems that the State of Punjab is not conducting both the tests as and when the samples of liquor, whether spurious or from distilleries of a different State, not meant for sale in Punjab are recovered as in a given case, an accused can misuse the branding by filling spurious liquor to sell it to general public, leading to hooch tragedy

List again on 21.12.2020.

Interim order to continue.

The affidavit of the Director General of Police, Punjab and the Home Secretary, Punjab regarding providing adequate set up for conducting both quantitative and qualitative tests be filed before the next date of hearing.

The personal appearance of Director General of

Police, Punjab and the Home Secretary, Punjab shall remain exempted.”

Thereafter, on receiving the affidavits of the Director General of Police and the Additional Chief Secretary, Department of Home Affairs & Justice, Punjab, the following order was passed on 21.12.2020:

“....A perusal of both the affidavits shows that no information has been supplied regarding number of pending cases before the FSL and it is also not explained as to how many Chemical Examination Laboratories are available in the State of Punjab to deal with the pending cases.

It is a matter of fact that the trials before the Courts, either under the NDPS Act or Excise Act, are delayed on account of awaiting the FSL report for a long time and in some cases, it takes about a year in receipt of report from the FSL.

Accordingly, the Director General of Police, Punjab and the Additional Chief Secretary, Department of Home Affairs and Justice, Punjab are directed to file their specific affidavit explaining as under:

- (i) the total number of cases/backlog cases pending with the FSL under the NDPS Act or Excise Act;
- (ii) how much time is required for clearing the backlog as on today;
- (iii) as to what is the existing infrastructure/Chemical Examination Laboratories available in the State of Punjab and what modes/measures are taken up to expedite the pending cases in this regard.

List again on 28.01.2021.

The affidavits be filed on or before the next date of hearing...”

Thereafter, on 22.02.2021, after hearing the arguments of learned counsel for the parties, the following order was passed:

“During the course of arguments, learned State counsel, on the basis of the affidavit of Additional Chief Secretary, Department of Home Affairs and Justice, Punjab, submits that with effect from 01.12.2020, the Chemical Examination Laboratory, Kharar has started performing both tests, qualitative and quantitative, simultaneously on all the samples received.

Learned State counsel, on the basis of the affidavit of the Director General of Police, Punjab, further submits that with regard to existing infrastructure/Chemical Examination Laboratories in the State of Punjab, there is only one Chemical Examiner Laboratory in Punjab located at Kharar which is analyzing the excise samples and it is also analyzing viscera and blood alcohol samples in addition to excise samples. It is further stated that in the year 2020, there were 27286 samples, out of which, 19153 samples were fresh of the year 2020 and 8133 samples were of 2019. It is also stated that there are total 14 posts sanctioned posts of Analysts at Chemical Examiner Laboratory, Kharar, out of which, 08 posts are filled up and 06 posts are lying vacant.

On a query put up by the Court regarding expediting the pending cases, it is stated that Government of Punjab is going to open a new Regional Chemical Laboratory at Jalandhar under Chemical Examiner Laboratory, Kharar and 21 posts have been sanctioned on 03.07.2020 and 08 posts have been sanctioned on 31.12.2020 and 06 Analysts are being hired on outsource basis and the process to fill up the vacant posts on regular basis is going on.

List again on 08.04.2021.

Interim order to continue.

In the meantime, the additional affidavit of the Additional Chief Secretary, Department of Home Affairs and Justice, Punjab as well as the Director General of Police, Punjab with regard to completing the process of establishing a new Regional Chemical Laboratory at Jalandhar be filed.”

On the last date of hearing i.e. 10.09.2021, an affidavit of the State was sought so as to apprise the Court if the process of filling up the posts in the newly created Regional Chemical Examiner Laboratory is initiated or not.

In pursuance thereof, an affidavit of the Principal Secretary to Govt. of Punjab, Department of Home Affairs & Justice has been filed in Court today. In this affidavit, it is stated that after the sanction of 21 posts by the Home Department and 08 posts by the Department of General Administration, vide their respective letters dated 03.07.2020 and 31.12.2020, the service rules of the newly created posts at Regional Chemical Laboratory, Jalandhar have been notified on 23.08.2021 (copy attached as Annexure R-1). It is further stated that process of filling up of 21 posts in Chemical Examiner Laboratory has been initiated and a demand letter dated 16.09.2021 (Annexure R-2) is sent to Punjab Public Service Commission, Patiala by the Department of Home Affairs & Justice. Similarly, a demand letter dated 16.09.2021 (Annexure R-3) is sent to Punjab Subordinate Service Selection Board by the Chemical Examiner Laboratory, Kharar for advertisement and selection on the aforesaid posts.

It is, thus, submitted in the affidavit that the State machinery is actively engaged making the Chemical Examiner Laboratory at Jalandhar operational and this petition may be disposed of.

In view of the same, the present petition is disposed of and the order dated 21.12.2020, granting interim bail to the petitioner, is made absolute, subject to the conditions envisaged under Section 438(2) Cr.P.C.

However, considering the fact that the General Legislative Elections of Punjab are due in February, 2022, the Principal Secretary to Govt. of Punjab, Department of Home Affairs & Justice, Punjab Public Service Commission, Patiala as well as Punjab Subordinate Service Selection Board are directed to fill up aforesaid 21 posts, as detailed in demand letters dated 16.09.2021, much prior to implementation of the model code of conduct.

A compliance affidavit of the Principal Secretary to Govt. of Punjab, Department of Home Affairs & Justice be filed on or before 28.02.2022.

22.09.2021

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No