

In virtual Court

CRM-M-31364-2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-31364-2021 (O&M)
Date of decision: 12.10.2021

Harish Dhingra @ Harish Kumar Dhingra

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of anticipatory bail in FIR No.61 dated 13.07.2021 under Sections 420, 336, 265 IPC, registered at Police Station City II, Abohar, District Fazilka.

While granting interim bail to the petitioner, following order was passed by this Court on 18.08.2021: -

“...Learned counsel for the petitioner submits that the FIR was registered at the instance of Food and Supplies Department, stating that a raid was conducted on M/s Kumar Enterprises. The owner of the godown/factory is petitioner Harish Dhingra, who was not present at the spot and one Raju son of Prem Kumar was

found present there. When he was asked about any licence/explosive department licence/certificate issued by the Weight and Measures Department, he could not produce anything. On checking of the godown/factory premises, two big tanks of petrol and two nozzle machines for filling the petrol were installed at the spot. Two tanks were containing 2000 litres of oil and one tank was containing 3000 litres of oil. Apart from this, plastic and iron tanks filled with oil were also found and total 13000 litres of highly inflammable substance like petrol/diesel was found. It is further stated that the work was done in collusion with petitioner Harish Dhingra with the services of Raju.

Learned counsel for the petitioner has argued that in fact, there is a rent agreement between co-accused Raju, who stands arrested at the spot and later on, released on regular bail and three owners of the premises namely Sandeep Kumar, petitioner Harish Dhingra and Ramesh Kumar, as per rent deed dated 01.02.2021. It is further argued that only the petitioner has been nominated, as other partner Sandeep Kumar is PA to the senior functionary in the Punjab Govt. It is also submitted that even as per contents of the FIR, offence under Sections 420/336 IPC is not made out, as it is case of the prosecution that at the spot, inflammable material like petrol or diesel was recovered without there being any licence or certificate issued by the competent authority, therefore, the offence would be falling only under the

Petroleum Act, which isailable.

Reply by way of affidavit of Deputy Superintendent of Police, Sub Division Abohar, District Fazilka filed in the Court today, is taken on record, in which contents of the FIR are verified. It is stated in the affidavit that SIT has been constituted and during the investigation, accused Raju was released on regular bail, however, petitioner Harish Dhingra is not arrested.

A perusal of the affidavit would reveal that nothing is stated as to how Section 420 IPC is made out, as only allegation in the FIR is of storing 13000 litres of liquid like petrol/diesel without any licence. It is not case of the prosecution that liquid recovered from the spot was found to be spurious to invoke Sections 420/336 IPC.

Learned State counsel has also placed on record a letter dated 03.08.2021 issued by the Punjab Small Industries & Export Corporation Ltd., Chandigarh, wherein it is stated that ownership of Plot No.C-24, Focal Point, Abohar lies with petitioner Harish Kumar Dhingra son of Dharam Chand Dhingra, Ramesh Kumar son of Babu Lal and Sandeep Kumar son of Sahi Ram for manufacturing of trading of oil and allottee has to take permissions/clearance/licenses from the concerned authority.

After hearing learned counsel for the parties and looking into the contents of the affidavit, it will be a debatable issue whether from bare perusal of the FIR and recovery of highly

inflammable substance, as reflected in the affidavit of DSP, ingredients of Section 420 IPC are made out or not. Affidavit of the DSP is silent about role of other two persons, who are stated to be co-owners of the petitioner.

List again on 12.10.2021.

In the meantime, the petitioner is directed to appear before the Investigating Officer within a period of 10 days to join investigation and he shall be released on interim bail on furnishing bail/surety bonds subject to the following conditions:-

- 1. He shall make himself available for interrogation by a police officer as and when required;*
- 2. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and*
- 3. He shall not leave India without previous permission of the Court.*

Affidavit of the SIT with regard to role of other two owners namely Ramesh Kumar son of Babu Lal and Sandeep Kumar son of Sahi Ram be also filed on or before the next date of hearing.”

Learned counsel for the petitioner submits that in pursuance of the aforesaid order, the petitioner has joined the investigation and is not required for any further investigation.

Learned State counsel, on the basis of affidavit of Deputy

Superintendent of Police, Sub Division Abohar, District Fazilka, submits that the petitioner has joined the investigation and an SIT has been constituted. It is stated in the affidavit that as per the investigation carried out so far, other two co-owners Sandeep Godara and Ramesh Kumar, though are joint owners of the property, where the godown is situated, however, they were not found actively involved in the business of oil.

Be whatsoever, it is own case of the prosecution that the said property was given on rent to co-accused Raj Kumar for Rs.15,000/- per month and therefore, all three owners including the petitioner, have jointly given the property to Raj Kumar, whereas only the petitioner has been named as an accused.

Considering the fact that the petitioner has joined the investigation and is no more required for further investigation, this petition is allowed and the interim bail granted to the petitioner vide order dated 18.08.2021 is made absolute subject to the conditions envisaged under Section 438 (2) Cr.P.C.

The SIT is directed to submit the report before the Illaqa Magistrate within a period of three months from today.

[ARVIND SINGH SANGWAN]
JUDGE

12.10.2021
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No