

103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31657-2021
Date of Decision: 14.12.2021

Gurmail Singh

.....Petitioner

Vs.

State of Haryana

.....Respondent

103-A

CRM-M-27087-2021

Harish alias Monu

....Petitioner

vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rahul Deswal, Advocate,
for the petitioner (in CRM-M-31657-2021).

Mr. Arjun Sheoran, Advocate,
for the petitioner (in CRM-M-27087-2021).

Mr. Munish Sharma, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

CRM-M-27087-2021

This petition has been filed under the provisions of Section 439 of the Cr.P.C., for grant of 'regular bail' to the petitioner in case FIR No. 0302, dated 17.05.2021, registered at Police Station Rai, District Sonipat, for the alleged commission of offences punishable under the provisions of Sections 188/269/270/420/465/467/468/471 of the IPC, Sections 61/4/20 of

the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) and Section 51 (B) of the Disaster Management Act, 2005.

The reply filed on behalf of the respondent-State, dated 01.09.2021, is ordered to be taken on record.

The petition having remained pending since 23.07.2021, today learned counsel for the petitioner submits that with even the report under the provisions of Section 173 (2) of the Cr.P.C. having been submitted (qua the petitioner), and it being essentially a magisterial trial, and with no other criminal case registered against him, he deserves to be admitted to bail, he having been now in custody for about 07 months.

Upon query to learned State counsel, he does not deny that as per his instructions the report under the provisions of Section 173 (2) of the Cr.P.C. has been submitted qua the petitioner and two other co-accused, though it is still to be submitted qua other co-accused, some of whom have not been arrested.

In view of the above, without making any comment on the actual merits of the case, the petition is allowed. The petitioner shall be admitted to bail upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial court/Duty Magistrate/Chief Judicial Magistrate concerned.

CRM-M-31657-2021

The status report filed by the Deputy Superintendent of Police, Head Quarters, Sonipat, dated 19.11.2021, is ordered to be taken on record.

On 25.08.2021 the following order had been passed by this court (also reproducing the earlier order passed on 09.08.2021):-

“Case heard via video conferencing.

By this petition, the petitioner seeks the concession of 'pre-arrest bail', upon FIR No. 302 having been registered at Police Station Rai, District Sonipat, on 17.05.2021, alleging therein the commission of offences punishable under the provisions of Sections 188/269/270 of the IPC (with Sections 420/465/467/468/471 of the IPC having been added later), as also Sections 61/4/20 of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) and Section 51-B of the Disaster Management Act, 2005.

On 09.08.2021, the following order had been passed by this court:-

“Case heard via video conferencing.

Learned counsel for the petitioner would place on record any toll tax receipts for the period in question showing that the consignment had actually been delivered in Arunachal Pradesh.

Adjourned to 18.8.2021.”

Pursuant thereto CRM-26185-2021 has been filed by the petitioner, seeking to place on record certain receipts for the period between 03.05.2021 and 08.05.2021, as also a copy of Form L-38 dated 03.05.2021.

No notice having been issued in the accompanying petition, none is required to be issued in this application and consequently, the application is allowed subject to all just exceptions and the copies of the aforesaid documents are ordered to be taken on record as Annexure P-9 collectively with the accompanying petition, with this court making no comment at this stage as to the significance of the said

documents in the context of the FIR registered.

Learned counsel for the petitioner submits that the illegal/illicit liquor as was seized from a truck in Sonipat, was on account of an allegation that the truck as was apprehended by the police in Sonipat, was also hired by the petitioner.

He however submits that with 03 consignments already delivered in Arunachal Pradesh, one with the same consignment number as (he being a transporter), then, if somebody else has forged that consignment number on another batch of liquor and left it in Sonipat, the petitioner cannot be connected to that, with him in any case never having hired the truck that was apprehended.

Again without making any comment on the correctness or otherwise of that contention, notice of motion is issued.

On the asking of the court, Mr. Neeraj Poswal, A.A.G., Haryana, accepts notice on behalf of the respondent-State.

A copy of the petition be emailed to learned State counsel by counsel for the petitioner today itself.

Adjourned to 11.10.2021.

In the meanwhile, upon the petitioner joining investigation within one week from today, in case 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 also comply with 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, in terms of the order of this court.

A gazetted officer of the police is directed to file a reply to the petition, after obviously duly consulting with the AETC/ETO concerned, to determine the connection, or otherwise, of the documents as have been annexed with the petition, to the 'story' of the petitioner and the facts as have been stated in the FIR.”

On 11.10.2021 the following order was recorded:-

“Case heard via video conferencing.

Pursuant to the previous order passed, a status report by way of an affidavit of the Deputy Superintendent of Police, Head Quarters, Sonipat, dated 06.10.2021, has been filed in reply to the petition, which is ordered to be taken on record.

Learned State counsel specifically points to the contents of paragraph 7 thereof, with learned counsel for the petitioner pointing to paragraph 8.

In view of what is specifically stated in paragraph 7 (to be reproduced in the order passed on the next date of hearing), this court would actually find no reason to entertain this petition further; however, it being well past 04:00 p.m. and learned counsel for the petitioner wanting to address more arguments, that is not being done today, with hearing in the matter adjourned to 14.10.2021.

To be shown in the urgent motion list, with it made clear that any request for an adjournment made by counsel for the petitioner on that date would not be entertained.”

Thereafter, on 14.10.2021 the following order was recorded:-

“The petitioner seeks to a replication by way of his affidavit dated 13.10.2021, which is ordered to be taken on record.

Other things apart, as regards what has been stated in paragraph 7 of the affidavit of the DSP (Headquarters), Sonapat, on Rs.10 lacs being transferred to the account of the petitioners’ firm by one M/s Shiva Enterprises, learned counsel submits that he has annexed with the replication good receipts/’bilties’ in respect of consignments carried by the trucks of his firm to M/s Shiva Enterprises in Arunachal Pradesh; and consequently the said transfer was on account of those consignments, between 02.04.2021 and 19.05.2021 (copies Annexure P-12, colly.)

He submits that the total amount comes to around Rs.1.3 crores.

It is to be noticed of course that in the affidavit of the DSP, it has been stated that the petitioner, during the course of investigation, had stated (as contended by the DSP), that he was only paid a commission by the drivers of the vehicles as had carried consignments, with M/s Shiva Enterprises paying the rent of the vehicles directly to the vehicles’ owners/drivers.

The petitioner has however placed on record what is stated to be documentary proof of business transactions with M/s Shiva Enterprises and the petitioners’ firm (Kuhar Roadlines). Naturally, the respondent State would be required to respond to the aforesaid, because eventually what the petitioner stated during his interrogation when he had joined investigation, would only be before this court as has been projected to this court by the DSP. In other words, the

significance, or otherwise, of the goods receipts/'bilties'/e-way bills (copy Annexure P-12), would need to be explained by the State, rather than this court simply believing what the petitioner is alleged to have stated during his interrogation (with no recording of any such interrogation brought out before this court).

Adjourned to 23.11.2021.

Interim order to continue."

Today, learned State counsel points to the additional affidavit filed by the DSP Head Quarters, dated 19.11.2021, to the effect that in respect of three goods receipts ('Biltis'), bearing the same number and same date, i.e. 054 dated 26.04.2021, 063, dated 03.05.2021 and 066, dated 03.05.2021, obviously two goods receipt books have been used, inasmuch as the same good receipts are shown to be written out differently, though with learned counsel for the petitioner submitting that the number of packages given on each duplicate copy of the aforesaid receipts, is not different.

Having considered even that argument, what is to be observed by this court (only for the purpose of this petition), is that goods receipts are issued normally from the same bill book and if three or more copies are to be issued, that is done by placing carbon papers between each copy so that what is written on the first copy is also reproduced in the subsequent copies.

Very obviously that was not done in this case and therefore apparently all is not right in the aforesaid transactions.

In view of the above, I see no reason to entertain this petition any further, which is consequently dismissed and the interim order dated 25.08.2021 vacated.

However, no observation made by this court either in this order or any previous order, would be taken into consideration to determine the actual guilt or innocence of the petitioner, 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 naturally, his guilt/innocence would be determined on the basis of evidence gathered/led.

A photocopy of this order be placed on the file of the other connected case.

December 14, 2021
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes