

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

CRM-M-37828-2021

Date of decision: 20.09.2021

Sanjay Kumar

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: - HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Suneel Ranga, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J.(Oral)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No.0216 dated 06.11.2020, under Sections 304, 328, 420 of IPC and Section 61/04/20 of the Punjab Excise (Haryana Amendment) Act, 2020 (Sections 72A, 72B of Excise Act, 2020 and Section 201 of IPC has been added later on), registered at Police Station Sanoli, District Panipat,

The present FIR came to be lodged on the basis of a statement made by one Sh. Inder Singh S/o Jai Singh, village Nangla Park, Police Station Sanoli, District Panipat by stating that he does labour work and he along with one Sushil while working in the fields went to purchase one bottle of country made liquor from a liquor vend (Theka) of their village

which is situated near Petrol Pump at Garhi Besak Road. Both of them drank some liquor from the said bottle and shortly after, returned to their respective houses. However, on next day, the aforesaid complainant got sick and started vomiting and complained about having stomach ache, after which he got medicine from one private doctor but he did not get any relief and his eyesight became weak. Later, he also heard that the other person who had consumed liquor namely Sushil alias Kala had died on 04.11.2020 due to spurious liquor sold to him, which he had consumed. Hence, action was sought to be taken against the liquor vendor/owner namely Sandeep.

The learned counsel for the petitioner has submitted that in the present case the name of the petitioner has not been mentioned in the FIR and it was on the basis of a disclosure statement of the co-accused during investigation of the case that his name has been nominated and since the disclosure statement is not admissible in evidence, he may be granted the concession of anticipatory bail. He submitted that no recovery was effected from the petitioner and although other FIRs are registered against the petitioner regarding a similar set of allegations but in one of those cases the petitioner was already granted anticipatory bail by the Additional Sessions Judge, Panipat on the ground that his name had been nominated on the basis of disclosure statement of the co-accused. Learned counsel has submitted that the petitioner cannot be prosecuted for the same offence more than once.

Notice in the present petition was issued to the State on 13.09.2021 and the learned State counsel had sought some time to file an

affidavit with regard to the role of the petitioner and as to whether the petitioner is involved in any other case or not and if so, then the details thereof.

A reply has been filed by way an affidavit of Deputy Superintendent of Police, Bapoli, Panipat on behalf of the State of Haryana, which is taken on record.

Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana while referring to the reply/affidavit filed by the State of Haryana has submitted that the petitioner was actively involved in the manufacturing and further dealing with spurious liquor and due to the consumption of spurious liquor one person in the present case had died and the eyesight of the complainant has been diminished. He submitted that the menace of spurious liquor in that area was very high and the petitioner is also involved in many other such like FIRs. He has submitted that the present FIR was lodged on 06.11.2020 and the petitioner is absconding and now after about 10 months, the present anticipatory bail application has been filed. While referring to the role of the petitioner based upon the affidavit filed by the State, learned Deputy Advocate General, Haryana further contended that it was a case where after the registration of the FIR, the co-accused namely, Sandeep, Vijay Pahal, Bantu @ Bintu, Naresh @ Neshi, Kuldeep, Mohit, Mandeep @ Setha, Manish, Vijay Kumar @ Tinu, Sandeep Mama, Ajit @ Jeeta, Mukesh @ Vicky, Deepak, Rajesh @ Bhalu, Ravinder @ Birender, Amit @ Meenu, Sandeep son of Kuldeep, Sumit @ Amit, Sandeep @ Sonu and Sandeep son of Sarupa were arrested by the Police. Out of the aforesaid accused who were arrested, Sandeep S/o Satbir, Sandeep son of Sarupa,

Deepak S/o Prithi, Naresh alias Neshi in their respective disclosure statements have disclosed the name of the petitioner and they alleged that they did the work of illicit liquor with the petitioner and the petitioner got acquainted with Sandeep S/o Satbir with Naresh alias Neshi, Mohit and their accomplices who are involved in the work of illicit liquor and at one point of time Sandeep and the petitioner brought the liquor from Naina Tatarpur and on the basis of the disclosure statements, it was found that the petitioner has actively participated in the manufacturing of spurious liquor and, therefore, the custodial investigation of the petitioner is very much necessary in the present case. He further submitted while referring to the details of other FIR against the petitioner that five more FIRs pertaining to the similar allegations were registered against the petitioner in the same Police Station on 05.11.2020, 06.11.2020, 07.11.2020 and 13.11.2020 and in all the FIRs, the aforesaid Sandeep son of Sarupa, Sandeep son of Satbir, Deepak son of Prithi and Naresh alias Neshi voluntary got their disclosure statements recorded before the police in which they disclosed the name of the petitioner and his active role in the alleged crime. While further referring to the aforesaid five FIRs, learned State counsel referred to the details of the same by stating that during investigation of FIR No.213, it was found that five persons had died due to the intake of spurious liquor, in FIR No.215 one person had died, in FIR No.216 also one person had died and another person lost his vision partially, in FIR No.217 one person had died, in FIR No.219 one person had died and in FIR No.223 again one person had died. The details as stated in the affidavit are reproduced as under:-

“During investigation of FIR No.213 death of following

persons found which are as under:

- 1. Kulbir S/o Pyara Singh R/o Village Dhansoli, District Panipat.*
- 2. Satpal S/o Rula Ram R/o Village Dhansoli, District Panipat.*
- 3. Kala S/o Alimudin R/o Village Dhansoli, District Panipat.*
- 4. Bijender S/o Gyani Ram R/o village Dhansoli, District Panipat.*
- 5. Shiv Kumar S/o Mangli Ram R/o Vill. Rana Majra, District Panipat.*

During investigation of FIR No. 215 death of following person found which is as under:

- 1. Mehar Singh S/o Piru Ram R/o Nangla Dera, District Panipat.*

During the investigation of FIR No.216 death of following person found which is as under:-

- 1. Sushil alias Kala S/o Sh. Sat Narain R/o Vill. Nangla Paar, District Panipat.*

However, Inder Singh S/o Jai Singh R/o Nangla Paar, District Panipat lost his vision partially.

During investigation of FIR No.217 death of following person found which is as under:

- 1. Inder Singh S/o Pirthi R/o Village Dhansoli, District Panipat.*

During investigation of FIR No.219 death of following person found which is as under:

- 1. Sunil S/o Mathu Ram R/o Village Kurar, District Panipat*

During investigation of FIR No.223 death of following person found which is as under:-

- 1. Babu Ram, @ Kala S/o Bhim Singh R/o Village Pathargarh, District Panipat”.*

The learned Deputy Advocate General, Haryana further submitted that the petitioner is involved in all the aforesaid FIRs where deaths of large number of persons have been caused due to intake of the spurious liquor and in the present FIR, the report under Section 173 Cr.P.C. was prepared on the basis of documents, evidence, statements, facts and material on record available with the police file and the same has been submitted against some of the co-accused who were earlier arrested but so far as the petitioner is concerned, he is absconding since November, 2020 and, therefore, challan could not be presented against him.

The learned Deputy Advocate General, Haryana further referred to para No.4 of the affidavit and contended that keeping in view the nature of accusation, severity of punishment and the supporting evidence and reasonable apprehension of the petitioner tampering with the witnesses and danger of the petitioner for absconding or fleeing from justice, danger to the life and property of the prosecution witnesses at the hands of the petitioner, the petitioner does not deserve the concession of anticipatory bail. Learned State counsel further submitted that the argument raised by the petitioner that he cannot be prosecuted for the same offence more than once is unsustainable in view of the fact that all the FIRs pertain to different cause of action.

I have heard the learned counsel for the parties.

In the present case, the accusation against the petitioner is that he was actively involved in the manufacturing of spurious liquor and dealing with the same, which was sold in the village which caused death of one of the persons and diminished the eyesight of the complainant. A

perusal of the affidavit filed by the State of Haryana would show that during the same time sphere i.e. from 05.11.2020 to 13.11.2020 as much as five FIRs were lodged against the petitioner involving a similar set of allegations in which about 10 persons had died due to consumption of spurious liquor and the petitioner is also accused in these FIRs along with some of the other co-accused who were also now accused in the present case as well. The argument raised by the learned counsel for the petitioner that his name has been nominated purely on the basis of disclosure statement and that he deserves to be granted the concession of anticipatory bail would be totally unsustainable in view of the fact that the nature of allegations against the petitioner are of such high a magnitude which involves large number of people and also affects the public interest. It is not only in the present FIR that due to the alleged consuming of the spurious liquor one person had died and one person got his vision diminished but in other five cases in the same time span also similar kind of events have happened where about 10 people have lost their lives. The petitioner is absconding not only in the present case but in the other cases as well except for one case in which according to the learned counsel for the petitioner, he has been granted interim protection. The grant of interim protection in one of the cases would not become a ground for concession of anticipatory bail in the present case. Learned counsel for the petitioner also referred the law laid down by Hon'ble Supreme Court in '**Siddharam Satlingappa Mhetre Versus State of Maharashtra**' [2011(1) SCC 694] to contend that the arrest should be the last resort and it should not be made with the object of injuring or harassing or humiliating the applicant. However, in the

aforesaid judgment the Hon'ble Supreme Court had laid down various parameters which can be taken into consideration while dealing with the anticipatory bail. Rather the Hon'ble Supreme Court has also held that it is the nature and gravity of the accusation apart from the antecedents of the applicant that are also to be considered. The impact of grant of anticipatory bail particularly in cases of large magnitude affecting large number of people is also to be considered and the entire available material against the accused must be evaluated very carefully. Furthermore, while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, firstly that no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused and that the Court must carefully examine the entire available record and particularly the allegations which have been directly attributable to the accused and whether these allegations are corroborated by other material and circumstances on record or not.

In the present case, the factors which have been mentioned in the affidavit filed by the State and the submissions made by the learned Deputy Advocate General, Haryana suggest that the magnitude and gravity of the accusation is very high and large number of people are affected and apart from the same, public interest is also involved where number of people have died due to drinking of the spurious liquor. The petitioner is absconding for last number of months. The Hon'ble Supreme Court in ***'State represented by CBI Versus Anil Sharma' [(1997) 7 SCC 187]*** has also held that custodial investigation is justified when the Court is satisfied that for the purpose of elicitation of truth, the same is required to be

resorted to. In the present case, the plea taken by the learned State counsel that his custodial investigation is required keeping in view the nature of accusation and the severity of punishment in the case of conviction and other supporting evidence would certainly carry weight.

Therefore, considering the totality of the circumstances of the present case, this court is not inclined to grant the concession of anticipatory bail to the petitioner.

Consequently, the present petition is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

20.09.2021
rakesh

whether speaking	:	Yes/no
whether reportable	:	Yes/no