

CRM-M-36320-2020 (O&M)

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

**CRM-M-36320-2020 (O&M).
Decided on: January 12, 2021.**

Rashpal Singh @ Shalu

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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PRESENT Mr.D.S.Pheruman, Advocate, and
Mr.Amandeep Singh Manaise, Advocate,
for the petitioner.

Mr.Gaurav Garg Dhuriwala, Sr. DAG, Punjab

JASGURPREET SINGH PURI, J.

This is a petition filed under Section 438 Cr.P.C.
for the grant of anticipatory bail to the petitioner in case FIR
No.221 dated 31.07.2020, under Sections 304, 328, 120-B IPC

read with Section 61/1/14 of the Punjab Excise Act, registered at Police Station City Tarn Taran, District Tarn Taran (Section 302 IPC and Section 6 of the Poison Act added later on).

The aforesaid FIR came to be registered on the basis of information received by the police that 12 persons who were named in the FIR have died because of consumption of spurious liquor but their legal heirs did not give the information to anyone and all of them were cremated. Besides that some other persons have also consumed spurious liquor and the cause of death of these deceased person's is yet to be confirmed and after getting confirmation, the addresses of unidentified accused should be verified so that they can be punished. The aforesaid FIR was lodged against unknown persons.

Learned counsel for the petitioner has argued that the petitioner was not nominated in the FIR and it was on the basis of disclosure statement made by another co-accused that his name has been nominated in the FIR which does not have any evidentiary value and therefore, he may be considered for the grant of anticipatory bail. He has further submitted that nothing is to be recovered from the petitioner as such, no useful purpose will be served in case the petitioner is taken in custody.

Notice of motion was issued in the present case whereupon the State has filed the status report by way of affidavit of Deputy Superintendent of Police, Sub Division, Tarn Taran, District Tarn Taran on 7.12.2020.

The learned counsel for the petitioner had pointed out that there were certain discrepancies in para 20 of the affidavit dated 5.12.2020, wherein the total number of other cases against the present petitioner has been shown. Thereafter, supplementary affidavit was filed by the DSP which also contained some discrepancies regarding pendency of other cases against the petitioner.

Thereafter one more affidavit has been filed by the State dated 11.1.2021 wherein fresh list of cases against the petitioner has been shown in a tabulated form in para 5. The deponent of the affidavit has prayed for unconditional apology for the errors and discrepancies stated in the earlier affidavits as recorded due to communication gap as well as other reasons which have been stated in the affidavit. Costs of Rs.20,000/- is also stated to be deposited by the State.

Learned counsel for the petitioner has submitted that now the table of other cases against the petitioner is correct. In

view of above, it is directed that aforesaid affidavit dated 11.1.2021, be taken on record.

Learned State counsel has submitted that it is a case where large scale spurious liquor was being traded in the State of Punjab regarding which investigation has been made by the police and number of accused have been nominated in the FIR **including the petitioner**. He has submitted that seriousness of the effect of trade of spurious liquor went to the extent that as much as 43 people died due to consumption of spurious alcohol. Even the post mortem of 19 persons has been conducted after receiving the viscera report, final opinion has also been obtained from the Board of Directors who opined that **cause of death in these cases is declared as Methyl Alcohol Poisoning which is sufficient to cause death in ordinary course of nature**. While referring to para 25 of the affidavit filed by the State dated 5.12.2020, he has submitted that eye sight of 4 persons has also been lost after consumption of spurious liquor and in this regard medical opinion has also been obtained from the Board of Directors in the present case who opined that according to clinical examination **the problems with patients Kuldeep Singh and Sukhdev Singh are cases of toxic Amblyopia and vision loss due to intake of**

spurious alcohol and further the Board of Directors opined that **on clinical examination of the eye sight of patient Jobanjit Singh and Jaswinder Singh, the patient was found to have normal ocular examination with no permanent Visual impairment.** Furthermore, after the registration of the FIR, offences under Sections 326 and 109 IPC were enhanced and thereafter, again offences were enhanced under Section 302 IPC and Section 6 of the Poison Act.

While referring to the aforesaid affidavit filed by the State, Mr.Gaurav Garg Dhuriwala, learned Sr. DAG, Punjab, has submitted that present FIR was registered on the basis of receipt of information that 12 persons have died after consuming spurious liquor and in view of seriousness of the offence, the SHO, Police Station City, Tarn Taran, had constituted Special Police Parties in order to investigate the present matter. At that time one Gurpreet Singh son of Piara Singh appeared before SHO and got his supplementary statement recorded to the effect that his father namely Piara singh was habitual of drinking liquor and on 30.7.2020, his father purchased liquor from Manjit Kaur wife of Bakshish Singh, resident of Opposite Shalimar Palace, Sarhali, Road, Tarn Taran and after consuming liquor his father Piara Singh

had died and he further stated that Kashmir Singh son of Piara Singh and Angrej Singh son of Dharam Singh, were also involved in smuggling of spurious liquor and they used to deliver the spurious liquor to aforesaid Manjit Kaur, upon which the SHO, conducted raid in the house of aforesaid Manjit Kaur and apprehended her and after conducting the search from her house, 10 litres 180 ml. alcohol was recovered from her house and later on, she also got recovered 2 litres of alcohol and during the course of interrogation, she voluntarily suffered disclosure statement before the investigating officer vide which it has been disclosed by her that one Kashmir Singh son of Piara Singh and Angrej Singh son of Dharam Singh had delivered above said spurious liquor to her and on the basis of above said disclosure statement suffered by co-accused Manjit Kaur, the accused Kashmir Singh and Angrej Singh have been nominated in the present case and during course of investigation, offences under Section 61/1/14 of the Punjab Excise Act, have been enhanced.

Later on due to enhancement of serious offences in the present FIR, the Director General of Police, Punjab, on 5.8.2020, constituted 3 member SIT under the chairmanship of Hardial Singh Maan, IPS, DIG, Ferozepur Range, Ferozepur and

the investigation involving the present case was handed over to SIT and during the course of investigation pursuant to the present case the arrest of co-accused Kashmir Singh and Angrej Singh was made by the SIT. After obtaining production warrants from the Illaqa Magistrate, Tarn Taran, on 10.8.2020, their police remand was obtained and during police remand, co-accused Kashmir Singh voluntarily suffered disclosure statement vide which it has been disclosed by the co-accused Kashmir Singh that Amarjit Singh, Baljit Singh, Shamsher Singh @ Shera, Gurpal Singh, Sukhdev Singh, Sukhdial Singh, Attar Singh, Nirmal Singh, Parkash Singh @ Passi, Gurjant Singh, Gurbaksh Singh @ Disha, Hardeep Singh @ Kashu, Bikramjit Singh @ Vicky, **Rashpal Singh @ Shalu (petitioner)**, Satnam Singh and Harjit Singh used to deliver above said spurious liquor to him and on the basis of said disclosure statement suffered by Kashmir Singh, accused Amarjit Singh, Baljit Singh and all the aforesaid persons were nominated in the present case including the petitioner.

During the course of investigation, arrest of co-accused Bikramjit Singh @ Vicky was made by the investigating officer on 16.8.2020 and he suffered disclosure statement before the investigating officer to the effect that he indulged in smuggling

of spurious liquor in connivance with Gurbaksh Singh @ Disha, **Rashpal Singh @ Shalu (petitioner)**, and various other persons mentioned by him on the basis of which other persons were nominated.

Thereafter, another co-accused Maami Kartari wife of Mehanga Singhy, was arrested on 18.8.2020 and she suffered disclosure statement by naming various other persons. During further investigation, another co-accused namely Rupa wife of Rajneet Singh @ Raju, and Amarjit Kaur @ Sethni wife of Mangal Singh, were arrested on 19.8.2020 and during interrogation, Amarjit Kaur @ Sethni voluntarily suffered disclosure statement to the effect that she indulged in the smuggling of spurious liquor in connivance with Prem Kaur and various other persons mentioned by her and consequently those persons were nominated. Thereafter, another co-accused namely Satnam Singh son of Harjit Singh and also Harjit Singh son of Piara Singh were arrested on 20.8.2020 and they also suffered disclosure statements that Avtar Singh son of Bhag Singh had delivered three drums of alcohol to him and he further delivered the same to various other persons and further disclosed that he indulged in smuggling of spurious liquor in connivance with

various other persons stated by him and thereafter, all of them were nominated in the present case. Thereafter, another co-accused Shamsher Singh son of Harjit Singh, Sukhdev Singh, Parkash Singh @ Passi, Avtar Singh, Rajiv Joshi, Ravinder Singh were also arrested and after obtaining production warrants from the learned Illaqa Magistrate they also suffered disclosure statements. Sukhdev Singh suffered disclosure statement to the effect that he indulged in smuggling of spurious liquor in connivance with Gurpal Singh, **Rashpal Singh @ Shalu (petitioner)** and other persons were also nominated by him. Shamsher Singh @ Shera also suffered a disclosure statement and disclosed the names of number of other persons including the **present petitioner Rashpal Singh @ Shalu.**

Mr.Gaurav Garg Dhuriwala, learned Sr. DAG, Punjab, has submitted that large number of people throughout the State of Punjab were involved in the present trade of spurious liquor and the name of the petitioner has been disclosed by number of co-accused and huge recoveries have also been made. He further submitted that as per para 14 of the affidavit, FSL report pursuant to recovery from co-accused Manjit Kaur was received from the FSL laboratory from where the contents of **Methanol, Ethanol, Isopropyl Alcohol, Ethyl Acetate, Toluene and I-Propanol** were

found and on the basis of aforesaid FSL report offence under Section 302 IPC, and 6 of the Poisons Act has been enhanced in the present case vide DDR No.36 dated 31.08.2020 and the FSL report pertaining to alcohol recovered from co-accused **Gurpal Singh i.e. brother of the petitioner** was received from the office of FSL, Mohali, Punjab and salt was found having ingredients of **Methanol, Ethanol, Isopropyl Alcohol, Ethyl Acetate, Dichloro Methane and Chloroform**. He further submitted that 43 people in the State of Punjab had died due to trading of spurious alcohol and the petitioner is actively involved in the aforesaid trading. He further submitted that final report under Section 173 (2) Cr.P.C. has already been presented before the learned Illaqua Magistrate/Duty Magistrate on 28.10.2020 against the number of accused mentioned in para 16 of the affidavit and the learned Illaqua Magistrate has already committed the present case to the Court of learned Sessions Judge, Tarn Taran being exclusively triable by the Court of Sessions.

He has further submitted that raids have been conducted by the police in order to arrest the remaining accused and other suspected persons and strenuous efforts are being made by the local police and the police is left with no other option but

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initiate proceedings to declare the remaining accused as proclaimed offenders. Consequently, proceedings under Sections 82 and 83 Cr.P.C. have been initiated against **petitioner Rashpal Singh @ Shalu** as well as other accused namely Jaimal Singh, Sakattar Singh, residents of village Pandori Gola and Jagtar Singh @ Jaggi resident of Kaka Kandiala by the Court of learned Illaqua Magistrate/Duty Magistrate.

He has further pointed out to the supplementary affidavit dated 11.1.2021 wherein it has been stated that petitioner was involved in 19 cases, out of which 6 cases are under the Punjab Excise Act. Table of cases and their status is reproduced as under:-

Sr. No.	FIR No.	Under Section	Police Station	Stage
1	FIR No.16 dated 5.2.2008	307/353/186/342 /148/149 of IPC	Sirhali	Convicted on 9.3.2015
2	FIR No.183 dated 23.10.2009	382, 392 of IPC	Patti	Convicted on 13.9.2010
3	FIR No.27 dated 25.2.2012	332/353/186/295 /379/506/34 of IPC	Sirhali	Convicted on 30.3.2015
4	FIR No.149 dated 22.10.2000	15/61/85 of NDPS Act.	Sirhali	Acquitted on 27.8.2011
5	FIR No.54/2003	365/302/201/334 of IPC	City Tarn Taran	Acquitted on 23.9.2010
6	FIR No.89 dated 1.10.2007	489 ABCD of IPC	Khalra	Convicted on 31.8.2012

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Sr. No.	FIR No.	Under Section	Police Station	Stage
7	FIR No.83 dated 08.10.2010	364/420/120-B of IPC	Goindwal Sahib	Acquitted on 12.10.2011
8	FIR No.33 dated 23.2.2009	382 IPC	Goindwal Sahib	Under trial
9	FIR No.108 dated 11.9.2009	489 ABCD of IPC	Sirhali	Convicted on 23.1.2013
10	FIR No.44 dated 3.4.2013	411/414/489 ABC of IPC and 15/18/21/22/61/8 5 of NDPS Act and 25/54/59 of Arms Act and 3/34/20 of IP Act	Sirhali	Untraced on 28.12.2019 due to non-recovery
11	FIR No.301 dated 15.11.2014	411/414/489 ABC of IPC and 15/18/21/22/61/8 5 of NDPS Act and 25/54/59 of Arms Act and 3/34/20 of IP Act and 14 F.Act	Patti	Under investigation
12	FIR No.309 dated 17.8.2014	420/410/34 of IPC	City Tarn Taran	Under trial
13	FIR No.138 dated 1.8.2016	31/1/14 of Excise Act	City Tarn Taran	Under investigation
14	FIR No.235 dated 10.12.2002	15, 61, 85 of NDPS Act.	Sarhali	Cancelled on 23.5.2004
15	FIR No.218 of 2020	302/304/328/326 /109/120-B of IPC and 61/63 of the Punjab Excise Act and 6 of Poison Act	City Tarn Taran	Under trial
16	FIR No.218 of 2020	328, 120-B of IPC and Section 61/63 of the Punjab Excise Act.	Verowal	Under trial

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Sr. No.	FIR No.	Under Section	Police Station	Stage
17	FIR No.223 of 2020	328/326/272/109 /114/120-B IPC and Section 61/63 of the Punjab Excise Act.	City Tarn Taran	Under trial
18	FIR No.226 of 2020	272,273,109, 120-B of IPC and and Section 61/63 of the Punjab Excise Act.	City Tarn Taran	Under trial
19	FIR No.253 of 2020	302, 307, 304, 326, 109, 114, 120-B of IPC and and Section 61/63 of the Punjab Excise Act.	Sadar Tarn Taran	Under trial

Learned State counsel has further submitted that it is a case where large number of people have died in the State of Punjab due to consumption of spurious liquor and proceedings against the petitioner have already been initiated for declaring him as proclaimed offender and custodial interrogation of the petitioner is required for the purpose of proper investigation of the case but the petitioner is on the run and therefore, he has prayed for the dismissal of the present petition.

I have heard the learned counsel for the parties.

It is a case where large public interest is involved. Due to trading of spurious liquor in the State of Punjab as many as 43 lives have been lost and number of people have been nominated in the present case as accused including the present **petitioner**. The argument raised by the learned counsel for the petitioner that the petitioner has been nominated on the basis of disclosure statements would not carry any weight in view of the fact that it is a case where FIR was registered against unknown persons on receipt of information that 12 people have died due to consumption of spurious liquor and it was only during the course of investigation that **more than one co-accused have disclosed the name of the petitioner** and therefore, the petitioner was nominated as an accused in the present case. The Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others, 2011 (1) SCC 694**, laid down the factors and parameters which are to be taken into consideration while hearing the anticipatory bail petitions. One of the parameter as laid down by the Hon'ble Supreme Court in this case was that while considering the grant of anticipatory bail, the Court has to see impact of grant of anticipatory bail particularly in cases affecting very large number of people. Apart from this, the possibility of likelihood of

accused to repeat the same very offence and the antecedents of the accused are also to be considered.

The relevant portion of the aforesaid judgment is reproduced as under:-

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made

only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of [sections 34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, 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;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are

by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the court of Sessions or the High Court is always available.

Irrational and Indiscriminate arrest are gross violation of human rights.

115. In Joginder Kumar's case (supra), a three Judge Bench of this Court has referred to the 3rd report of the National Police Commission, in which it is mentioned that the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large,

nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails.

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.”

In the present case, the petitioner was involved in 19 other cases including 6 under the Excise Act and in 5 cases he has been stated to be acquitted. However, it cannot be said that antecedents of the petitioner are clear particularly in view of the fact that he has also been convicted in some other cases as per table reproduced above. Therefore, possibility and likelihood of the petitioner to repeat the same or other offences cannot be ruled out on the basis of aforesaid antecedents. Furthermore, considering the magnitude of the involvement of the petitioner and large number of other accused affecting large number of people, it will not be just and proper to grant the concession of anticipatory bail to the petitioner. It is a settled law that while considering the prayer for the grant of anticipatory bail, the Court has to strike a balance

between the two factors namely right of freedom on the one hand and other factors including the reasonable apprehension of tampering of the record, influencing the witnesses, magnitude of the case affecting large number of people and antecedents of the accused and such like factors. In the present case *ex facie* the magnitude of the subject matter of the present case is very large affecting large number of people and therefore, the freedom of the petitioner can certainly be curtailed in accordance with law.

Therefore, considering the totality of circumstances of the present case, I deem it fit and proper not to interfere in the present case and consequently, the present petition is dismissed being devoid of any merits.

However, it is made clear that aforesaid observations of this Court are only for the purpose of deciding the present petition and will not in any manner whatsoever reflect on the merits of the case.

January 12, 2021.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No