

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-46410-2021

Date of decision : 03.11.2021

Gorav Dhawan

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Tarun Sharma, Advocate
for the petitioner.

Mr.N.K.Banka, DAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is the first petition under Section 438 Cr.P.C. for grant of pre-arrest bail to the petitioner in FIR no.12 dated 09.01.2021 registered under Sections 61, 78 of the Punjab Excise Act, 1914, at Police Station Dirba, District Sangrur.

Learned counsel for the petitioner has submitted that in the present case even as per the prosecution version, on the basis of secret information, branded liquor, which was supposed to be sold in the State of Haryana, was caught being transported in the State of Punjab and the recovery has been made only from Sukhjinder Singh and Gurpreet Singh and no recovery has been made from the present petitioner and in fact even as per the prosecution case, the petitioner was not even traveling in the vehicle from which the recovery has been made and was rather stated to be

submitted that he has been falsely implicated in the present case at the instance of his brother-in-law inasmuch as there is a matrimonial dispute between the sister of the petitioner and her husband. Learned counsel for the petitioner has also contended that the mandatory provisions of Cr.P.C. have not been complied with in the present case before carrying out the search, even from the car in which the co-accused were traveling.

On advance notice, Mr.N.K.Banka, DAG, Punjab, appears and accepts notice on behalf of the State. He has submitted that he is fully prepared to argue the matter and assist the Court. He has opposed the petition for anticipatory bail and has submitted that there was a telephonic conversation between the petitioner and the said Sukhjinder Singh from whom the recovery has been made. It is further submitted that the petitioner is involved in another case.

Learned counsel for the petitioner, in rebuttal, has submitted that as per his instructions, the said alleged case was a very old case and no details have been mentioned regarding the same in the order rejecting the bail application of the petitioner and he has been informed that the petitioner has been acquitted in the said case. Further learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”*, 2012 (2) SCC 382** to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second

respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

Keeping in view the abovesaid facts and circumstances, more so the fact that neither recovery has been effected from the petitioner nor the petitioner has been apprehended at the spot and in fact the petitioner was traveling in a separate car and not in the car from which the recovery has been made and even the recovery made from co-accused is of licit liquor which could be legally sold in Haryana and also keeping in view the law laid down by the Supreme Court in ***Maulana's*** case (supra), the present petition for anticipatory bail is allowed and in the event of arrest, the petitioner shall be released on bail subject to furnishing personal bonds and surety to the satisfaction of Arresting / Investigating Officer. The petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) of Cr.P.C.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

November 03, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No