

[101] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.9183 of 2022

Date of Decision : 17.08.2022

Loven Sharma son of Shri Narinder Kumar ...Petitioner

versus

State of PunjabRespondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Anureet S. Sidhu, Advocate for the petitioner.
Mr. Ayush Sarna, Asstt. AG, Punjab.

B.S. Walia, J. (Oral)

[1] Prayer in the 5th petition before this Court, under Section 438 Cr.P.C. (besides two petitions u/s 438 Cr.P.C. before the Sessions Court) is for grant of anticipatory bail in case FIR No.69 dated 17.05.2019 registered under Section 61 Punjab Excise Act, 1914 read with Sections 420, 465, 467, 468, 471 and 120-B IPC, 1860 at Police Station Lalru, District SAS Nagar, Mohali.

[2] A perusal of the paper book reveals that FIR No.69 dated 17.05.2019 was registered under Section 61 of the Punjab Excise Act, 1914 read with Sections 420, 465, 467, 468, 471 and 120-B IPC, 1860 at Police Station Lalru, District SAS Nagar, Mohali, on the basis of secret information that one Harvinder Singh Chadha @ Manga Chadha, J.D. and Loven Sharma (petitioner) were carrying on business of production of illicit liquor in an abandoned factory near Lalru Mandi, whereupon a raid was conducted in which 12000 bottles of liquor besides machinery required for distilling liquor was recovered from the spot.

[3] Learned counsel contends that the petitioner is in no way connected with the alleged offences and has been made a scape goat, that the learned Sessions Court dismissed the petition filed by the petitioner for grant of pre arrest bail vide order dated 17.06.2019, whereafter the Hon'ble High Court vide order dated 17.07.2019 in CRM-M No.29935 of 2019 initially released the petitioner on interim bail along with co-accused Ravinder Singh but eventually dismissed said petition vide order dated 23.10.2019. Learned counsel further contends that challan has been presented, co-accused Ravinder Singh and Harwinder Singh, main accused have been released on bail, no recovery is to be effected from the petitioner, therefore, in the circumstances, the petitioner is entitled to be released on pre-arrest bail especially as the petitioner is not required for custodial interrogation.

[4] Reply dated 12.08.2022 has been filed by the learned AAG stating therein that the instant 5th petition before this Court u/S 438 Cr.P.C. is a gross abuse of the process of law as CRM-M No.29935 of 2019, CRM-M No.13512 of 2021, CRM-M No.21350 of 2021 and CRM-M No.28519 of 2021 were dismissed by the Hon'ble High Court and there is no change in the circumstances, therefore, no ground is made out for grant of anticipatory bail. The reply further mentions that pursuant to the registration of the FIR, raid was conducted in which heavy recoveries were effected from the factory premises including 1000 boxes of illicit liquor, 3400 ltr. Spirit, 200 ltr. JFL Brand, 20 ltr. Essence of liquor, 30 ltr. FF, 50 Ltr ENA, 80000 Stickers of Marka Rasila Santra, 39000 holograms, 1250 empty half bottles of royal stag brand, 1 canter bearing registration No.PB 65-K-6321 besides machinery, articles and equipment for manufacturing illicit liquor. The reply further mentions

that accused Sachin and Sanjay were arrested on the spot on 17.05.2019, while accused Ravinder alias JD was arrested on 13.12.2019 and Harvinder Singh Chadha @ Manga Chadha was arrested on 17.07.2020 but aforesaid accused were released on regular bail while accused Harmesh and the petitioner were absconding and could not be arrested despite best efforts by the investigating agency. Reply further mentions that Harvinder Singh Chadha @ Manga Chadha was arrested on 17.07.2020 and in his statement, had disclosed that he was manufacturing illicit liquor and had employed Harmesh Singh accused as his driver. Petitioner was also working with him and on the advice of accused Ravinder alias JD, they had taken a vacant factory on rent in the area of Village Alamgir, Lalru from its owner at monthly rent of Rs.23000/- for manufacturing illicit liquor on the pretext of installing a water purifying unit and on 01.05.2019, possession of the aforementioned rented building was taken, whereupon, the petitioner brought a machine for manufacturing illicit liquor while his friend Sumit was supplying them plugs and labels and the petitioner had been obtaining / purchasing empty bottles, that they continued manufacturing illicit liquor for 10-12 days and thereafter on 17.05.2019 an FIR was registered and during investigation, it was found that the petitioner was working as Manager in the said factory where illicit liquor was being manufactured and was looking after the work of sale and purchase of materials and articles used in manufacturing illicit liquor, besides supplying illicit liquor to various customers and had thereby played an active role in the commission of the crime, allegations against the petitioner were grave and serious, there was cogent, and sufficient incriminating evidence against the petitioner, therefore, he was not entitled to the grant of

anticipatory bail and that apart from the aforementioned FIR, another FIR bearing FIR No.50 dated 22.04.2020 was registered against the petitioner under Section 61 of the Punjab Excise Act read with Sections 420, 465, 468, 471, 269 IPC and Section 51 of the Disaster Management Act, 2005 at Police Station Sadar, Khanna, District Ludhiana, co-accused in their disclosure statements as well as witnesses in their statements recorded under Section 161 Cr.P.C. had disclosed the active and specific role by the petitioner in the case, which could not be disclosed due to pendency of the investigation, therefore, custodial interrogation of the petitioner was necessary, that challan had already been presented against Harvinder Singh Chadha @ Manga Chadha and Ravinder Singh alias JD but trial had not commenced against them as the petitioner could not be arrested and investigation was still pending.

[5] It transpires that while FIR No.69 was registered on 17.05.2019, the petitioner has managed to evade arrest as also joining investigation during all this time besides is a habitual offender as evident from his involvement in a subsequent FIR in respect of similar offence registered in another district.

[6] No doubt, it is always open to a Court to consider a subsequent bail application on account of change in circumstances and although learned counsel for the petitioner contended that there was change of circumstances as investigation was complete and the petitioner was not required for investigation, yet reply filed on behalf of the State states otherwise and reveals that investigation against the petitioner is still pending and as per the statement of the co-accused, as well as witnesses recorded u/s 161 Cr.P.C. there was active and specific involvement of the petitioner in the commission of the offence, that he had procured the

machinery as also other material for the manufacturing of liquor in the factory, besides, conducted sale of illicit liquor along with his friend Sumit. In '**G.R. Ananda Babu** versus **State of Tamil Nadu**', 2021 SCC Online SC 176, Hon'ble the Supreme Court held that successive anticipatory bail applications were not maintainable in view of the petitioner therein absconding and not cooperating in the investigation. Relevant extract of the aforementioned decision is reproduced as under:-

“ As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No.2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge. ”

[7] Moreover, recovery pursuant to registration of FIR is of a huge quantity of illicit liquor along with machinery, equipment, raw material for manufacturing illicit liquor as well as labels for sale of said illicit liquor.

[8] The petitioner had initially filed a petition for pre arrest bail before the learned Sessions Court, which was dismissed vide order dated 17.06.2019, whereafter the petitioner approached the High Court by way of CRM-M No.29935 of 2019 in which no doubt the High Court released the petitioner initially on interim bail vide order dated 17.07.2019 but the same was eventually dismissed vide order dated 23.10.2019. Thereafter, CRM-M No.13512 of 2021 was withdrawn vide order dated 24.03.2021 while CRM-M No.21350 of 2021 was withdrawn on 10.06.2021 with liberty to take out appropriate proceedings before the learned trial Court in accordance with law in view of stand of change in circumstances.

Thereafter, CRM-M No.28519 of 2021 was dismissed as withdrawn on 10.11.2021 with liberty to avail appropriate remedy, whereafter the petitioner filed a petition u/s 438 Cr.P.C. before the learned Sessions Court, which was also dismissed on 22.02.2022 by a detailed order.

[9] As per the decision of ***G.R. Ananda Babu's case*** (supra), successive anticipatory bail application cannot be entertained especially if the accused is absconding and not cooperating in the investigation. Same is the position in the instant case. Accordingly, in view of the FIR being of the year 2019 and the petitioner not cooperating besides not being traceable, is not entitled to grant of pre- arrest bail. Learned AAG contends that in view of earlier petition for anticipatory bail i.e. CRM-M No.29935 of 2019 having been dismissed by the High Court vide detailed order dated 23.10.2019 and there being no change in circumstances, the petitioner is not entitled to pre arrest bail as the same would amount to interfering with the investigation besides custodial interrogation is qualitatively more elicitation oriented than questioning as a suspect who is well ensconced with a favourable order under Section 438 of the Code of Criminal Procedure and in such like cases, effective interrogation of a suspected person is of tremendous advantage in disinterring useful information and such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is to be interrogated. Learned counsel relies upon the decision of Hon'ble the Supreme Court in '**P. Chidambaram v. Directorate of Enforcement, Crl. Appeal No.1340 of 2019 decided on 05.09.2019**', which in turn reiterates decision in '**CBI versus Anil Sharma**', 1994 (4) (Crl.) 268, in support of the aforementioned submissions. Relevant extract of the same is reproduced

as under:-

“ 72. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Prearrest bail is to strike a balance between the individual’s right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State Rep. By the CBI v. Anil Sharma, (1997) 7 SCC 187, the Supreme Court held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

[10] In view of position noted above, petitioner not cooperating and managing to evade arrest for close to 3 ½ years, allegations against petitioner being serious, petitioner being a habitual / repeat offender in two different districts, co-accused in their disclosure statements as well as witnesses in their statements recorded under Section 161 Cr.P.C. having disclosed active and specific role of the petitioner in the case, custodial interrogation of the petitioner required by the police and there

being no change in the circumstances, the instant petition is held to be not maintainable and is accordingly dismissed as such.

17.08.2022

'Rajneesh'

Whether speaking/ reasoned

:

Yes/No

Whether reportable

:

Yes/No

(B.S. Walia)

Judge