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

CRM-M-11365-2022

Date of decision:23.03.2022

KARNAIL DASS

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Vishal Goel, Advocate
for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. FIR No.54 of 28.07.2020, constitutes therein offences under Section 61 of Excise Act, 1914, and, is lodged at Police Station Bakshiwalla, District Patiala.

2. In pursuance to the afore lodged FIR at the Police Station (supra), the bail applicant is in judicial custody. Consequently, through the instant application cast under Section 439 of the Cr.P.C., he claims relief for being ordered to be released from judicial custody.

3. The incriminatory role, as attributed to the bail applicant in the FIR (supra), is that he is illicitly supplied the country made liquor bottles numbering about 96, to the offender concerned.

4. Be that as it may, the learned State counsel on instructions given to her by the investigating officer concerned, submits, that all the relevant recoveries have been effectuated at the instance of the accused concerned, to the investigating officer concerned. She also submits, that

investigations into the FIR (supra), inasmuch as they relate, to the other co-accused is complete, and, rather for the petitioner avoiding his arrest by the investigating officer concerned, the latter did not name him, as an accused in the report prepared under Section 173 Cr.P.C., and, as became instituted by him before the learned Magistrate concerned.

5. The investigating officer concerned, may not have taken, to even if the bail applicant, was avoiding his becoming arrested by the investigating officer concerned, rather exclude his naming him in the report filed under Section 173 Cr.P.C., as thereafter, he could make a valid attempt, before the learned Magistrate concerned, to, excepting the other co-accused, who became granted bail by Courts of law, rather qua the present bail applicant, especially given the afore avoidance of his becoming arrested by the investigating officer, qua his being injuncted to make his personal appearance, for facing the relevant charge, through his being produced after execution, upon him, of Non Bailable Warrants of arrest. Even if, thereafter(s) there were yet absconsion, when even after adopting the procedure contemplated under Section 82 Cr.P.C., and, it not yielding the requisite result, then also through recouring the mandate of Section 299 Cr.P.C., the learned trial Court concerned, could open trial against the appearing accused, and, defer it qua the absconding accused, upto, his surrendering before the Court concerned. Obviously also all above could occur only upon the name of the accused being named in the 173 Cr.P.C., report, and, not upon his exclusion therein.

6. Be that as it may, the afore infirmities can still be cured by the investigating officer concerned, through his filing a supplementary challan against the accused before the learned Magistrate concerned.

7. Nonetheless, since the judicial incarceration of the bail applicant, has commenced since 19.02.2022, and, also when (as stated supra), the error arising from the investigating officer concerned, omitting to name the accused, in his initially instituted report under Section 173 Cr.P.C., before the learned Magistrate concerned, can yet become cured through his instituting a supplementary challan against the accused. Therefore, given the afore prolonged period of judicial custody, and, also when all the relevant recoveries have been effectuated, at the instance of accused concerned, to the investigating officer concerned, besides when the investigations are complete, and, challan has been filed before the learned Judicial Magistrate concerned, hence, this Court becomes constrained to admit the bail petitioner to regular bail.

8. However, she submits that since the accused bail applicant, is a habitual offender, hence, the facility of regular bail, as craved for, in the instant application, be not accorded to him.

9. Be that as it may, the imposition of stringent conditions, is rather deemed fit and appropriate, for being imposed upon the petitioner-bail applicant, necessarily as a measure to allay, the apprehension (supra), reared by the learned State counsel.

10. Consequently, it is not necessary to prolong the judicial incarceration of the bail applicant, as thereupon his personal liberty will come to unnecessarily fettered, and, curtailed. The instant petition is allowed, and, the petitioner-bail applicant is ordered to be released from judicial custody. However, the granting of bail to the bail applicant-petitioner, is subject to his furnishing personal, and, surety bonds in the sum of ₹50,000/- each, before the learned trial Court/Chief Judicial

Magistrate/Duty Magistrate concerned, and, also subject to his not tampering with prosecution evidence, and, his not influencing prosecution witnesses, and, besides also his appearing before the trial Court concerned, as and when directed to make his personal appearance. Further, subject to petitioner-bail applicant making an undertaking before the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned, that in case, he re-indulges in criminal activities, of a nature alike to the present one, whereupon, on breach thereof, the order made today, shall become *ipso facto* annulled, and, that, upon, his being forthwith arrested by the investigating officer concerned, the latter shall produce the petitioner-bail applicant before the trial Court concerned, for the latter making an order for his being put to judicial custody.

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23.03.2022

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Whether speaking/reasoned:-
Whether reportable:

(SURESHWAR THAKUR)
JUDGE

Yes/No
Yes/No