

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr.No.101

CRM-M No.29225 of 2022 (O&M)
Date of Decision: 05th August, 2022.

Deepak @ Kaka

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Ms. Divya Narula, Advocate,
for the petitioner.

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MEENAKSHI I. MEHTA, J. (ORAL)

CRM No.27902 of 2022

The present application has been preferred on behalf of the applicant-petitioner for seeking permission to place Annexures P-2 & P-3 on the record.

Heard.

Keeping in view the reason as mentioned in this application, the same is allowed and Annexures P-2 and P-3 are taken on the record.

CRM-M No.29225 of 2022

Apprehending his arrest in the criminal case arisen out of the FIR bearing No.344 dated 02.05.2022 registered at Police Station City Sirsa, under Section 61 of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020), the petitioner has preferred this petition to seek the relief of pre-arrest bail.

2. Bereft of unnecessary details, the allegations levelled against the petitioner in the instant case, are that on the basis of a secret information, the police party, headed by PSI Lalit Kumar, raided at the shop being run under the name and style of 'Pawan Confectionery'. The young boy, who was present there, tried to flee away but he was apprehended and on being enquired, he disclosed his name as Harish Kumar and in pursuance of the information as provided by him, the freezers kept in the shop, were checked and 112 bottles of Beer make King Fisher, 10 bottles of King Fisher Ultra Max, 18 bottles of Wood Wizer, 05 bottles of Tu-burg, 18 bottles of Miller AC as well as 221 Quarters and 18 Halves containing different brands of liquor were recovered from the same. The said accused further disclosed that the above-said Beer and liquor had been handed over to him by the petitioner for the sale.

3. Learned State counsel, on the instructions from HC Wazir Singh from the afore-said Police Station, informs the Court that besides the present case, the petitioner has remained involved in five more criminal cases including three cases under the Excise Act.

4. I have heard learned counsel for the petitioner as well as learned State counsel in the present petition and have also perused the file carefully.

5. Learned counsel for the petitioner contends that the recovery of the Beer/liquor has already been effected in this case and now, nothing remains to be recovered from the petitioner and he has been arraigned as an accused in the instant case merely on the basis of the revelation as allegedly made by his above-named co-accused and moreover, he (petitioner) has already been granted the relief of pre-arrest bail in two other cases by the Co-ordinate Benches vide orders Annexures P-2 & P-3 and in these circumstances, he deserves the same relief, as prayed for by him, in this petition also.

6. Per-contra, learned State counsel argues that the petitioner is a habitual offender and he has to be interrogated to elicit information from him regarding the source of supply of the Beer and the liquor as recovered in the present case and it being so, this petition be dismissed.

7. Undisputedly, the afore-named co-accused of the petitioner has specifically named him as the person who had supplied the entire stock of the above-said liquor and Beer. The investigation qua the petitioner in the present case is at the nascent stage and the possibility of the requirement of the custodial interrogation of the petitioner to unearth the *modus-operandi* adopted by him to procure the said Beer/liquor, cannot be ruled out.

8. As regards the orders Annexures P-2 & P-3 as passed by the Co-ordinate Benches for granting the relief of pre-arrest bail to the petitioner in two other cases, the same are of no avail to the petitioner to claim the relief as sought in this petition because as per order Annexure P-2, the said relief had been extended to him in view of the observations made by the Apex Court in **Tofan Singh vs. State of Tamil Nadu, (2021) 4 RCR (Criminal) 1** but however, in a subsequent judgment as rendered by the Hon'ble Supreme Court in **State of Haryana vs. Samarth Kumar, Criminal Appeal No.1005 of 2002 (Arising out of Special Leave Petition (Crl.) No.6575 of 2021) Decided on 20.07.2022** while discussing the judgment as handed down in **Tofan Singh (Supra)**, it has categorically been observed that *“to grant anticipatory bail in the case on the ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused, is not really warranted and therefore, the High Court fell into an error in granting anticipatory bail to the respondents”*. In view of the afore-quoted observations, the order Annexure P-3 as passed by the Co-ordinate Bench in CRM-M

No.28565 of 2022 would also be of no help to the petitioner to seek the relief of pre-arrest bail.

9. Keeping in view the above-discussed facts and circumstances as well as the nature of the offence as alleged to have been committed by the petitioner, this Court is of the considered opinion that he (petitioner) does not deserve the relief of anticipatory bail. Resultantly, the petition in hand stands dismissed accordingly.

(MEENAKSHI I. MEHTA)
JUDGE

05.08.2022.
seema

Whether speaking/reasoned?	Yes
Whether Reportable?	Yes