

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-36315-2022

Date of Decision: 08.09.2022

Sukhwinder Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vijay Lath, Advocate, for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No. 154 dated 23.12.2021, under Section 61 of Punjab Excise Act, 1914 (Act No.1 of 1914), registered at Police Station Sri Anandpur Sahib, Tehsil Sri Anandpur Sahib, District Rupnagar, Punjab.

Learned counsel for the petitioner has submitted that the petitioner was falsely implicated in the present case and the petitioner was neither found on the spot nor did he run away from the spot and no article belonging to the petitioner was found on the spot to connect the petitioner with the present offence. He further submitted that the place from where the alleged Lahan was recovered is neither under the possession of the petitioner nor it is owned by him and recovery was made from the open space which is accessible to all. He further submitted that although the petitioner is involved in some more cases

under the Excise Act but it is a settled law that mere pendency of the other cases against an accused cannot become a ground for denial of bail to the accused. In this regard, he has also referred to a judgment of this Court in ***Kans Raj Vs. State of Punjab [CRM-M-44260-2020, decided on 30.12.2020]***.

On the other hand, Mr. Amit Rana, learned Senior Deputy Advocate General, Punjab has submitted that he has received an advance copy of the present petition and he has also sought instructions from the concerned I.O who is present in the Court. He further submitted that it is a case where an FIR was lodged against the petitioner and some other co-accused on the basis of information received by the police through a special informer that in the seasonal tributary in the area of village Gambhirpur near cremation ground, some persons namely Shankar Bhaiya (migrant labour), Didar Singh, Vikram and Sukhwinder Singh (Petitioner), residents of village Majari, Police Station Kot Kehloor, District Bilaspur, Himachal Pradesh by conniving with each other are using iron as well as plastic drums under the cover of polythene sheets and are preparing raw Lahan and by installing the equipments, they are extracting the illegal liquor and if immediate raid is conducted, then they can be apprehended on the spot alongwith the equipment and large quantity of raw Lahan and thereafter, on the basis of information an FIR was lodged against the aforesaid persons. After the registration of the FIR and informing the higher officers and the control room of Rupnagar, the police party proceeded towards the spot for conducting raid and an Excise Inspector was also contacted on phone No. 94170-72632 who was also asked to reach on the spot.

The learned Senior Deputy Advocate General, Punjab submitted that thereafter the raid was conducted but all the accused fled away from the spot and could not be arrested. He further submitted that the place at which the illegal distilling for making liquor was being done is a place which is on the

border of Punjab and Himachal Pradesh and there is a small water body over there. He further submitted that a detailed affidavit has been filed by the Deputy Superintendent of Police, Sri Anandpur Sahib, District Rupnagar and while referring to the said affidavit, he submitted that total 1000 liters of Lahan was found embedded in the earth at the eastern side of the rivulet of Gambhirpur Lower and apart from the aforesaid drums, further checking of the area, polythene tarpaulin was also found embedded in the earth which was containing about 9000 liters of Lahan was also found on the spot and further 4 empty tins of 15 liters each were also recovered from the spot. Thereafter, samples of 180 ml each were also drawn containing Lahan in the presence of witnesses and Gurinder Pal, Excise Inspector Circle Nangal and the same were sealed by him and the process was also photographed by the Investigating Officer-ASI Pritam Singh. In this way, total 10000 liters of Lahan contained in five drums and tarpaulins were found embedded in the earth at the eastern side of the rivulet of Gambhirpur Lower and the same was destroyed on the spot as it was not viable to take the same to police station from the spot. However, 5 drums and 4 empty tin containing 15 liters each were taken into police possession by the investigating officer in the present of the witnesses. The aforesaid Gurinder Pal, Excise Inspector Circle Nangal examined 5 samples of Lahan and gave his report that the five drums and tarpaulins were containing Lahan (raw liquor). He further submitted that during investigation various witnesses who were acquainted with the facts and circumstances of the case were joined in investigation and their statements were also recorded. During investigation of the case of Shankar @ Basant Mandal who is the co-accused in the present case was arrested on 20.07.2022 and from his interrogation it was revealed that petitioner alongwith co-accused had embedded drums and tarpaulins containing Lahan in rivulet of Gambhirpur for distilling the illicit

liquor. However, no evidence was found against the other co-accused namely Didar Singh and therefore, he was declared as innocent in the present case. He further referred to para No.5 of the affidavit and submitted that the petitioner is habitual offender in trading and distilling of the illicit liquor and he is involved as many as 14 other cases in the State of Himachal Pradesh. He further submitted that the present case of occurrence is on the border of Punjab and Himachal Pradesh where there is small water body and at that place the present petitioner alongwith the other co-accused were distilling illicit liquor. He further submitted that in 3 of the aforesaid 14 cases the petitioner is although acquitted but the remaining 11 cases are still pending against the petitioner at Bilaspur and now the petitioner has started distilling illicit liquor in the territory of Punjab which falls at the border of Punjab and Himachal Pradesh. The list of the 14 cases as stated in para No.5 of the affidavit are reproduced as under:-

Sr. No.	Registered FIR/Case	Present status of the FIR/Case
1.	FIR No.137, Dated 06.10.2005, U/s 61(1) Punjab Excise Act, 1914, P.S. Kot Kehloor, District Bilaspur (HP).	Acquitted on 20.03.2010.
2.	FIR No.09, Dated 07.01.2009, U/s 61(1) Punjab Excise Act, 1914, P.S. Kot Kehloor, District Bilaspur (HP).	Acquitted on 16.08.2017.
3.	FIR No.123 Dated 28.12.2009, U/s 61(1) Punjab Excise Act, 1914, P.S. Kot Kehloor, District Bilaspur (HP).	Acquitted on 23.01.2018.
4.	FIR No.60, Dated 01.06.2013, U/s 341, 323 IPC, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is going on.
5.	FIR No.126, Dated 14.11.2014, U/s 341, 323, 504, 506, 34 IPC, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is pending.
6.	FIR No.127, Dated 16.11.2014, U/s 447, 434, 34 IPC, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is pending.

7.	FIR No.130, Dated 24.11.2014, U/s 39(1) Himachal Pradesh Excise Act, 2011, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is pending.
8.	FIR No.12, Dated 10.01.2015, U/s 39(1) Himachal Pradesh Excise Act, 2011, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is pending.
9.	FIR No.96, Dated 12.09.2015, U/s 39(1) Himachal Pradesh Excise Act, 2011, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is pending.
10.	FIR No.133, Dated 01.12.2015, U/s 39(1) Himachal Pradesh Excise Act, 2011, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is pending.
11.	FIR No.99, Dated 28.09.2019, U/s 39(1) Himachal Pradesh Excise Act, 2011, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is pending.
12.	FIR No.63, Dated 09.05.2020, U/s 39(1) Himachal Pradesh Excise Act, 2011, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is pending.
13.	FIR No.04, Dated 01.02.2022, U/s 39(1) Himachal Pradesh Excise Act, 2011, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is pending.
14.	FIR No.76, Dated 12.06.2020, U/s 61(1) Punjab Excise Act, 1914, P.S. Kot Kehloor, District Bilaspur (HP).	The trial of the case is pending.

Learned Senior Deputy Advocate General, Punjab further submitted that the menace of distilling of illicit liquor needs to be checked in the State of Punjab since the State of Punjab has witnessed a number of deaths in the last 3-4 years due to spurious and illegal liquor. He submitted that large portion of the confiscated liquor was also in plastic tarpaulin which is otherwise also not only unhygienic but also can make the Lahan toxic. He further submitted that in view of the aforesaid facts and circumstances the custodial interrogation of the petitioner is required for the purpose of elicitation of truth and for qualitative interrogation. He also referred to a judgment of the

Hon'ble Supreme Court in this regard in the case of *State represented by the C.B.I. Vs. Anil Kumar Sharma [1997(7) SCC 187]*.

I have heard the learned counsel for the parties.

As per the allegations the petitioner alongwith other co-accused were distilling illicit liquor and there was a recovery of 10000 liters of Lahan at a place which falls at the border of Punjab and Himachal Pradesh and there is a small water body as per the learned State counsel adjoining to which the illicit liquor was being distilled. The petitioner is stated to be involved in as many as 14 other cases, although he has been acquitted in 3 cases. The argument raised by the learned counsel for the State that the menace of distilling of illicit liquor is a serious problem in the State of Punjab carries weight especially in view of the fact that during the last 3-4 years a number of persons have died in the State of Punjab due to consumption of spurious liquor. The mere fact that the petitioner was not found on the spot or that the land does not belong to the petitioner would not vest a right in the petitioner for grant of anticipatory bail more particularly when there are other relevant factors which deserve consideration. The petitioner is stated to be involved in 14 more cases in Himachal Pradesh and the place from where there was a confiscation of Lahan is at the border of Punjab and Himachal Pradesh. The argument raised by the learned counsel for the petitioner that the pendency of the other cases cannot become a bar for grant of bail to the petitioner seems to be attractive but does not cut any ice in view of the fact that out of the 14 cases, the petitioner is still facing trial in 11 cases and the same pertains to the State of Himachal Pradesh and the place of occurrence in the present case was at the border area. There are other factors which are also required to be considered apart from the aforesaid fact that the petitioner is a habitual offender. It is not a case that the petitioner is involved in cases which constitute a private kind of offence or such kind of

offence which affects only 1 or 2 persons but on the other hand the petitioner is involved in those cases which affects large section of society and it has got not only an adverse social impact but also affects the rights of lives of people at large. There is no dispute regarding the fact that large number of people had died due to consumption of spurious liquor in the State of Punjab and therefore, confiscation of huge quantity of Lahan which affects large number of persons can certainly become a relevant ground for denial of anticipatory bail to the petitioner.

Therefore, considering the gravity, seriousness and magnitude of the offence which has an effect upon large section of society, this Court is of the view that the petitioner does not deserve the concession of anticipatory bail.

Consequently, the present petition is dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

08.09.2022

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No