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

CRM-M-55797-2022 (O&M)

Date of Decision: 22.12.2022

KULVINDER

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Satnam Singh, Advocate
for the petitioner.

Mr. Ram Kumar Singla, DAG, Haryana.

HARSH BUNGER, J. (Oral)

Prayer in this petition, filed under Section 438 of the Code of Criminal Procedure, 1973, is for grant of anticipatory bail to the petitioner, in case FIR No.280 dated 21.11.2022 registered under Section 61 of the Excise Act, 1914 (Haryana Amendment Bill, 2020) at Police Station Pillu Khera, District Jind.

Learned counsel for the petitioner submits that the name of the petitioner is not mentioned in the FIR in question. He further submits that in the FIR, name of accused is mentioned as Balwinder Singh @ Kinder but the police is threatening to arrest the present petitioner-Kulvinder, whereas, no criminal offence has been committed by him. It is submitted that the petitioner has falsely been implicated in the present case due to political rivalry / party faction in the village. Learned counsel contends that infact the

brother of the petitioner namely Harvinder Singh has been falsely implicated in case FIR No. 396 dated 15.11.2022 registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act at Police Station Safidon, District Jind on the basis of disclosure statement of accused and the police was raiding the house of petitioner to arrest Harvinder Singh and on one occasion the petitioner met the raiding police party who asked the petitioner to produce Harvinder Singh, else the petitioner would be involved in some other case(s). This is how, it is stated, that the petitioner has been implicated in this false case on wholly extraneous considerations. It is further stated that the story as set up by the prosecution is totally unbelievable as despite alleged receipt of secret information, the petitioner was not apprehended at the spot and that too in the presence of a police force. It is also submitted that no recovery has been effected from the petitioner and there is non-compliance of Section 100 Cr.P.C. as no independent witness or inhabitant of the village was associated with the alleged search of place by the police party and neither any lady constable was accompanying them.

Learned counsel for the petitioner submits that the bail application filed by the petitioner under Section 438 of the Code of Criminal Procedure has been wrongly declined by the learned Additional Sessions Judge, Jind vide order dated 24.11.2022 (Annexure P-1). He submits that the petitioner is ready and willing to join investigation as and when required by the Investigating Agency or as directed by this Court/trial Court.

Upon issuance of notice in this case, learned State counsel has appeared and opposed the bail of the petitioner by submitting that the

offence is serious in nature, as the petitioner has committed offence under Section 61 of the Excise Act, 1914, by keeping 600 liters of lahan and 35 liters of illicit liquor.

I have heard learned counsel for the parties and have also perused the paper book with their able assistance.

As per the prosecution case, the raid was conducted on the basis of secret information. It is highly improbable that despite receipt of secret information, the police would go unprepared and would not be able to arrest the petitioner. It is not in dispute that the petitioner was not apprehended at the spot in spite of the presence of several police officials. The petitioner has raised the plea that on account of the fact that in another case FIR, the police was raiding the house of the petitioner to arrest the brother of the petitioner namely Harvinder Singh and since Harvinder Singh was not found, the present petitioner has been falsely implicated in the present FIR. The said plea cannot be rejected outrightly.

In “*Sushila Aggarwal v. State (NCT of Delhi)*”, reported as **2020 (1) R.C.R. (Criminal) 833**, Hon'ble Apex Court observed as under:

“54. In *Gudikanti Narasimhulu v. Public Prosecutor, 1978 (1) SCC 240* this court observed that:

“... Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all,

personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law".

55. *The reason for enactment of Section 438 in the Code was Parliamentary acceptance of the crucial underpinning of personal liberty in a free and democratic country. Parliament wished to foster respect for personal liberty and accord primacy to a fundamental tenet of criminal jurisprudence, that everyone is presumed to be innocent till he or she is found guilty. Life and liberty are the cherished attributes of every individual. The urge for freedom is natural to each human being. Section 438 is a procedural provision concerned with the personal liberty of each individual, who is entitled to the benefit of the presumption of innocence. As denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when not imposed by the legislature. In Sibbia, it was observed that:*

"Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely. "

56. *The interpretation of Section 438 that it does not encapsulate Article 21, is erroneous. This court is of the opinion that the issue is not whether Section 438 is an intrinsic element of Article 21: it is rather whether that provision is part of fair procedure. As to that, there can be no doubt that the provision for anticipatory bail is pro-liberty and enables one anticipating arrest, a facility of approaching the court for a direction that he or she not be arrested; it was*

specifically enacted as a measure of protection against arbitrary arrests and humiliation by the police, which Parliament itself recognized as a widespread malaise on the part of the police... ”

In ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273***, Hon'ble the Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

Having regard to the abovementioned facts and circumstances, this Court is inclined to grant the concession of anticipatory bail to the petitioner; especially considering the fact that the recovery has already been effected and nothing is to be recovered from him, hence the petitioner is not required for custodial interrogation. No useful purpose would be served by sending the petitioner to custody.

In view of the aforementioned discussion , the instant petition is accepted and it is ordered that the petitioner, in the event of his arrest, shall be released on bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

It is made clear, in case, the petitioner fails to join the investigation or does not cooperate with the investigation then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner.

Nothing stated above shall be construed as an expression of

opinion on the merits of 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 application.

Ordered accordingly.

22.12.2022
Amandeep

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No