

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-14651-2023

Date of Decision:-23.03.2023

Anmol Saini @ Moli.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Piyush Khanna, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for grant of anticipatory bail in case FIR No.0023 dated 07.02.2023 under Section 61-1-14 of Punjab Excise Act registered with Police Station City, District Hoshiarpur.

2. The brief facts of the case are on 07.02.2023 SI Navjot Singh along with other police officials was present at Shimla Pahari Chowk in connection with patrolling duty where he received secret information that Anmol Saini @ Moli (petitioner) had opened a gym at the back side of D-NUVO Hotel. Under the guise of running a gym he was actually selling liquor. Earlier also a huge quantity of illicit liquor had been recovered from the said gym. The petitioner had again started the business of selling liquor in the gym after coming out of the jail. He had employed one Jaswinder Singh son of Amrik Singh for selling illegal liquor. If a raid was conducted heavy quantity of liquor would be found lying in the premises of the gym.

Based on the said information the aforesaid FIR came to be registered. Pursuant thereto a raid was conducted at the gym. On seeing the raiding party one person present in the gym tried to run away from the spot but was apprehended. He disclosed his name as Jaswinder Singh son of Amrik Singh. During the checking of the premises 156 bottles of liquor make "Punjab Club Whiskey, 24 bottles of liquor make 999 Power Star Fine Whiskey meant for sale in Chandigarh (UT) came to be recovered.

3. The Counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. Neither was he the owner of the gym nor had he any concern with the alleged recovery of liquor. Since the recovery of liquor already stood effected and accused Jaswinder Singh had been arrested after which he had been granted the concession of bail, therefore, the petitioner was entitled to the grant of anticipatory bail as no case for custodial interrogation was made out.

4. The Counsel for the State on the other hand contends that the petitioner was duly named in the FIR as the person running the gym and also dealing with illicit liquor. The statement of the gym owner had been recorded under Section 161 Cr.PC as per which it was the petitioner who had leased the premises in question from which the liquor had been recovered. Since there were as many as 04 other cases against the petitioner bearing FIR No.312 dated 08.11.2022 under Section 61/1/14 Excise Act P.S. City Hoshiarpur, FIR No.267 dated 23.12.2021 under Section 61/1/14 Excise Act and Sections 25/54/59 Arms Act P.S. City Hoshairpur, FIR No.23 dated 08.11.2022 under Section 61/1/14 Excise Act P.S. Model Town, Hoshiarpur and FIR No.76 dated 5.3.2023 under Section 61/1/14 Excise Act and Section 482 IPC P.S. Model Town, Hoshiarpur, the criminal antecedents of the petitioner also did not entitle him to the grant of

anticipatory bail.

5. I have heard learned Counsel for the parties.

6. Admittedly, the petitioner is named in the FIR. There is evidence to suggest that the premises was being used by him ostensibly as gym but actually to store and sell illicit liquor. He is also a habitual offender with as many as 04 other cases registered against him of identical nature.

7. The Hon'ble Supreme Court in the case of "***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***", held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

" It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

*We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. **There appears to be***

a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail”.

8. In view of the aforementioned discussion, the serious nature of the allegations levelled against the petitioner, as also his criminal antecedents, no ground for the grant of anticipatory bail is made out and therefore this petition is dismissed.

(JASJIT SINGH BEDI)
JUDGE

March 23, 2023
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No