

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

CRM-M-23661-2022

Date of Decision: 17.04.2023

SWARN SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Satpreet Grewal Kapila, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER, J. (ORAL)

Petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, seeking anticipatory bail in case FIR No.12 dated 22.01.2022, registered under Section 61 of the Punjab Excise Act, 1941, at Police Station Dasuya, District Hoshiarpur.

Status report by way of an affidavit of Sh. Balbir Singh, PPS, Deputy Superintendent of Police, Sub-Division Dasuya, District Hoshiarpur, on behalf of State of Punjab, has been filed, which is already on record.

Briefly, the case of the prosecution is that on 22.01.2022, ASI Rachhpal Singh along with the police party was present at Village Terkiana, in private vehicle in connection with patrolling and checking of bad elements, when a secret informer gave an information that Swaran (petitioner) sells illicit liquor after preparing the same on the bank

of Beas River, behind the wild grass and sells it in the area of Hoshiarpur. It is submitted that if the raid is conducted right away then said Swaran can be apprehended and heavy quantity of *lahan* and illicit liquor can be recovered from him.

Finding the afore-said information as reliable, FIR No.12 dated 22.01.2022 under Sections 61/1/14 of the Excise Act was registered against the petitioner at Police Station Dasuya, District Hoshiarpur.

As per the status report, on the basis of secret information, the raid was conducted and *34000 litres lahan, 17 tarpalas and 2 bhathia*, were recovered, whereas, the petitioner is stated to have fled away from the spot after seeing the police party. Accordingly, the police of Police Station Dasuya, inspected the spot; prepared the site plan of place of recovery and recorded the statements of the witnesses.

Apprehending arrest in this case, the present petitioner approached the Court of Additional Sessions Judge, Hoshiarpur, seeking anticipatory bail; however, the same was dismissed vide order dated 05.05.2022 (Annexure P-2.).

Feeling aggrieved, the petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973, before this Court seeking anticipatory bail.

Learned counsel for the petitioner has submitted that the petitioner is innocent and has been falsely implicated in this case. It is submitted that the story set up the prosecution is highly improbable as in the presence of so many police officials, the petitioner could not have fled away from the spot. He has further submitted that the petitioner was granted interim bail by this Court vide order dated 27.05.2022 and thereafter, he

had joined the investigation; accordingly, learned counsel prayed that anticipatory bail may be granted to the petitioner.

Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner on the ground that he had fled away from the spot after seeing the police party and 34000 litres lahan, 17 tarpalas and 2 bhathia, were recovered from the spot. It is further submitted that though the petitioner had joined the investigation but he has not furnished the complete facts within his knowledge to the Investigating Officer; therefore, his custodial interrogation is required. Learned State counsel has also submitted that the petitioner is a habitual offender and is involved in ten other cases under the Excise Act. In this regard, he has referred to para No.5 of the status report, which reads as under :-

5. That it is submitted that the petitioner is habitual offender and the following cases are registered against the petitioner :

<i>Sr. No.</i>	<i>FIR No./dated</i>	<i>Under Section(s)/ Excise Act</i>	<i>Police Station</i>
<i>1</i>	<i>28/15.02.2022</i>	<i>61/1/14</i>	<i>Dasuya, District Hoshiarpur</i>
<i>2</i>	<i>17/03.03.2020</i>	<i>61/1/14</i>	<i>Bhaini Mia Khan, District Gurdaspur.</i>
<i>3</i>	<i>179/13.09.2019</i>	<i>61/1/14</i>	<i>Tanda, District Hoshiarpur</i>
<i>4</i>	<i>147/22.10.2005</i>	<i>61/1/14</i>	<i>Kahnuwan, District Gurdaspur.</i>
<i>5</i>	<i>76/17.04.2019</i>	<i>61/1/14</i>	<i>Tanda, District Hoshiarpur.</i>
<i>6</i>	<i>52/22.10.2007</i>	<i>61/1/14</i>	<i>Kahnuwan, District Gurdaspur</i>
<i>7</i>	<i>24/23.04.2022</i>	<i>61/1/14</i>	<i>Kahnuwan, District Gurdaspur.</i>
<i>8</i>	<i>125/14.07.2000</i>	<i>61/1/14</i>	<i>Kahnuwan, District Gurdaspur.</i>
<i>9</i>	<i>49/26.05.2002</i>	<i>61/1/14</i>	<i>Kahnuwan, District Gurdaspur.</i>
<i>10</i>	<i>147/22.10.2005</i>	<i>61/1/14</i>	<i>Kahnuwan, District Gurdaspur.</i>

I have heard learned counsel for the petitioner; learned State counsel and have also perused the paper book as well as status report filed on behalf of State of Punjab.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

In this case, the petitioner is stated to have fled away from the spot after seeing the police party and huge quantity of *lahan* (34000 litres), *tarपालas* (17) and *bhathia* (2), were recovered from the spot. There is no weight in the contention of learned counsel for the petitioner that the prosecution case is highly improbable as the said contention shall be considered by the trial Court during the course of trial. Further, the petitioner does not have clean antecedents inasmuch as, he is involved in ten more cases under the Excise Act.

In my considered view, the custodial interrogation of the petitioner is definitely required for complete and effective investigation to find out as to from where, he had procured the items for making *lahan* and to who all persons he had been providing the illicit liquor etc.; moreover, when it is the contention of learned State counsel that although, the petitioner has joined the investigation; however, he has not furnished the complete facts and requisite information to the Investigating Officer.

In case, custodial interrogation of the petitioner is denied to the investigating agency, that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for. In ***State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268***, Hon'ble the Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than

questioning a suspect who is on anticipatory bail.

Keeping in view the above facts and circumstances, the present petition under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioner in case FIR No.12 dated 22.01.2022, registered under Section 61 of the Punjab Excise Act, 1941, at Police Station Dasuya, District Hoshiarpur; is dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the 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 petition.

April 17, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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