

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

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**CRM-M-56687-2023
Date of decision: 16.11.2023**

MAHENDER @ MAHENDER SINGH

....Petitioner

Versus**STATE OF HARYANA**

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

Through this petition, filed under Section 439 Cr.P.C., relief of regular bail has been sought in case FIR No.326 dated 08.08.2023, under Sections 420, 467, 468 and 471 of IPC and Section 61(1) (a) of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020), registered at Police Station, Dabwali, Sadar (Sirsa), District Sirsa, Haryana.

2. Learned counsel for the petitioner submits that the petitioner is behind the bars since 08.08.2023, and has been falsely implicated in the instant FIR (supra), despite being having valid licence and passes to transport the liquor. He further submits that two passes of Excise Department, which are alleged to be forged one, were produced by the contractor of the petitioner on 18.08.2023. He further submits that even if we consider the allegation as a gospel truth, then only the offence punishable under the Excise Act is made out. The offences under Sections 420 and 471 IPC are attracted only on the act and conduct of the contractor of the petitioner, who in fact presented the passes to the Police officials

concerned. He also submits that there is no dispute that he was carrying the country made liquor, English liquor and beer, which are legally produced and purchased, however, since the petitioner was unable to show any passes to transport the same, thus he has been involved in the instant matter.

3. The investigating agency was brought into motion upon a complaint lodged by SI Ram Niwas, who was on a patrolling duty and was going from village Dabwali to Ellenabad in an official vehicle bearing registration no.HR24GV/1414 in connection with patrolling and when they reached near Bus Stand, Moujgarh, one car was seen coming from the side of Ellenabad and on seeing the police party, its driver got perplexed and turned his vehicle back and as he turned his vehicle and tried to proceed towards Ellenabad, the engine of the vehicle went off. On suspicion, the driver of the vehicle was over powered by SI Ram Niwas with the help of other police officials and on enquiry, he disclosed his name as Mahender son of Dharampal, resident of village Beed Bhadra, District Hanumangarh. On checking, the vehicle i.e. the white coloured Mahindra Pick-up Bolero was found carrying cardboard boxes of country made liquor, English liquor and beer. The driver of the vehicle was asked to produce licence, permission, or permit, but he failed to produce the same.

4. Huge quantity of country made liquor, English liquor and beer was recovered from the vehicle, therefore, initially the offence under Section 61(1) (a) of Excise Act was invoked.

5. During investigation, on 18.08.2023 i.e. after 10 days of the arrest of the petitioner, the contractor with whom the petitioner was working as a driver had produced two passes of Excise Department before the Court, which were sent for verification. The Excise Department after inspection vide its letter no.468/Ex

dated 18.08.2023, had handed over its report regarding inspection. The validity regarding the liquor passes no. 233024093116 & 233007093117 were found valid as per their office record and the pass no.233007093117 was valid on dated 08.08.2023 from 11:37 AM to 2:39 PM and pass no.233024093116 was valid on dated 08.08.2023 from 11:34 AM to 2:37 PM., but it is mentioned in the said letter that the abovesaid vehicle, in respect of which FIR was registered, was apprehended at 1:00 AM on 08.08.2023. Therefore, the abovesaid passes have no concern with the liquor, as the vehicle was recovered by the Police with the liquor on 08.08.2023 at 1:00 AM. Further, it is mentioned that the vehicle apprehended by the police and the vehicle number mentioned in the passes are different. It is further mentioned in the letter that if a person is found in possession of liquor or beer without the excise pass (Form L-34) beyond the specified quantity and without any excise licence permit, or transport it without any pass, then it is against Excise Rules

6. Therefore, by placing reliance upon facts (supra). Learned counsel for the petitioner submitted that the petitioner was found carrying illicit liquor, rather he was carrying the liquor of his contractor, who has valid licence from the Excise Department. However, as per the allegations (which he denied in toto), he was transporting the same without having any valid pass, in fact, the passes which have been shown, have already expired and the vehicle number prescribed in the passes is different from the vehicle, which was used for transportation.

7. Learned State counsel, while opposing the bail petition submits that, though, the passes were produced by the contractor, which attracts the provisions of Sections 420 and 471 of IPC, however, being the driver of the contractor, the petitioner is also responsible for the same. He further submits that the challan has

been filed on 20.10.2023, and now the matter is fixed for framing of charges before the learned trial Court.

8. *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled ***“State of Rajasthan V. Balchand alias Baliay”, 1977 AIR 2447, 1978 SCR (1) 535***. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

9. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

10. In ***“Nikesh Tarachand Shah V. Union of India”, (2018) 11 SCC 1***, the Hon’ble Supreme Court has recorded the following:-

“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted

or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases' observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must

have his freedom to enable him to establish his innocence.

28. *Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)*

“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”

29. *In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)*

“There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. *In AMERICAN JURISPRUDENCE (2d, Volume 8, p.806, para 39), it is stated:*

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”

11. Also, in ***Siddharam Satlingappa Mhetre v. State of maharashtra, Criminal Appeal No.2271 of 2010***, the Hon’ble Supreme Court has insisted upon

striking a perfect balance of sanctity of an individual's liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

12. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law.

13. In the instant FIR, two persons have been arrayed as accused. It is not in dispute that the petitioner was arrested while transporting the huge quantity of liquor, however, the same was not found to be illicit liquor, rather the petitioner was unable to show any excise passes for transportation of such liquor. Learned State counsel, on instructions from ASI Sushil Kumar, does not dispute the fact that the petitioner is not involved in any other case. The record further reveals that all the witnesses are official witnesses, therefore, there is no chance that the petitioner can influence the prosecution witnesses. Further the petitioner is behind the bars since 08.08.2023 and trial is yet to start.

14. In view of the above, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

15. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

16.11.2023
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No