

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

CRM-M-23408-2023

Date of Decision:-04.03.2024

Virender Singh.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

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

Present:- Mr. Ankit Chahal, Advocate for the Petitioner.

Mr. Rupinder Singh Jhand, Additional Advocate General,
Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.112 dated 25.03.2023 under Sections 420, 467, 468 and 471 IPC and Section 61 of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) registered at Police Station Bahalgarh, District Sonipat, Haryana.

2. The present FIR came to be registered at the instance of Excise Officials which reads as under:-

“ To The Station House Officer, Police Station, Bahalgarh Jai Hind. Today I, SI Along with HC Anil 2113/Sonepat, EHC Vikas 184/Sonepat, Constable Vinod 2137/Sonepat, in Government Bolero No.HR 10GV- 1452 with driver EIIC Sudhir 1541/Sonepat with laptop and printer, for patrolling and crime checking am present at Village Raipur Adda when the Secret Informer visited and informed that Tinu alias Tinku Kumar S/o Rajbir resident of Village Kheribura, District Dadri, at present Omaxe City E Block Sonipat and Prachand Kumar

resident of Nepal alongwith his other companions. after purchasing cheap liquor unauthorizedly, by putting the same in different liquor Marka bottles and by putting fake labels thereon of different brands of liquor, on which FOR SALE TO DEFENSE PERSONAL ONLY is written, and by putting fake holograms on bottles, by preparing liquor illegally, they do illegal liquor business. Today Tinu alias Tinku and Prachand loaded illegally prepared liquor in the above vehicle Marka Venue of white colour bearing No.HR 18D 1764 from BPL Flat, Omaxe City Sonipat to village Shahpur from G.T. road and it will go towards Delhi via the road, if barricade is done near BPL flat Omaxe City, then Tinu Kumar and Prachand can be apprehended along with illegal liquor loaded in the vehicle. Finding the secret information believable, after intimating the accompanying officials about the information, after getting the secret informer free, I, S.I. alongwith accompanying officials in Goverament vehicle, after reaching the government's BPL Flat, Omaxe City Sonapat, had started making barricade and the passersby people were asked to join the investigation, who all expressed their compulsion without disclosing their names, went away from there. I, S.I. after intimating to Excise Inspector Shri Ashok Malik about secret information on telephone, requested him to come at the spot. During this, a car Marka Venue of white colour was seen coming from the side of village Shahpur, Sonapat and which was given signal by me, S.I. to stop. The driver of the vehicle after stopping the vehicle at some distance from the barricade started trying to flee. I. S.I. with the help of the accompanying officials, apprehended that person alongwith the car, who on interrogation by me, S.I. the driver disclosed his name as Teenu Kumar alias Tinku son of Rajbir, resident of village Kheribura, District Dadri, at present Omaxe City, E-Block, House No. 1100, Sonapat and the boy sitting on the conductor seat disclosed his name as Prachand Kumar son of Bhojwa, resident of Fatehpur, District Bake, Nepal, at present tenant in village Shahpur, Sonapat and on checking the car Marka Venue of white colour, it was found to be HR 18D 1764. When the car was checked, in the car liquor boxes were found. At this time, Shri Ashok Malik, Excise Inspector. Sonapat has come at the spot, in whose presence the car was searched, then on checking the liquor boxes loaded in the car, 9 boxes of BALENDERS PRIDE and it is. written on English liquor bottles FOR SALE TO DEFENSE PERSONAL ONLY or 9 boxes of liquor English Bottles of

ROYAL STAG labeled FOR SALE TO DEFENSE PERSONAL ONLY and 48 bottles Marka OFFICERS CHOICE English Liquor, found in black polythenes and on the labels of those bottles. FOR SALE TO DEFENSE PERSONAL ONLY is written. On the Dibbas of the recovered liquor bottles and on bottles holograms are marked. Regarding the recovered liquor, on demanding, the said persons Teenu Kumar alias Tinku and Prachand could not produce any license or permit. After taking out 1-1 bottles English liquor from each Marka as sample, parcels have been prepared and remaining 47 bottles put in the polythenes Marka OFFICERS CHOICE English Liquor and 11 bottles OLD MONK XXX RUM English Liquor in black polythene, after putting different Markas in separate plastic bag. parcels were prepared and separate parcels of the remaining bottles were prepared. After sealing all the parcels with seal AS. sample seal was prepared separately. The aforesaid recovered liquor and sample parcel and aforesaid car were taken into police possession as proof vide memo. Memo was prepared and accused as well as witnesses put their signatures on the memo. The seal after use was handed over to H.C. Anil 2113/Sonepat. The person namely, Teenu alias Tinku and Prachand aforesaid in collusion with their other accomplices, after purchasing the cheap liquor unauthorizedly, by putting the same in the bottles of different Markas of liquor, by putting duplicate labels thereon on which FOR SALE TO DEFENCE PERSONAL ONLY is written and on the duplicate bottles by putting fake holograms, preparing liquor illegally and keeping illegal liquor in his possession, they have committed the offence under section 61-4-20 EX ACT, Sections 420/467/468/471 IPC, on which the writing is sent to the police station through Constable Vinod 2137/Sonepat for getting a case registered. After registering the case, FIR number may be intimated. 1, S.t. being complainant in the present case for conducting further investigation, second investigating officer may be sent on the spot. 1. S.I. am busy in conducting the investigation at the spot. At: Near BPL Flat Omexe City, Sonepat SD ASHOK KUMAR SI, SI Ashok Kumar 950/Sonepat. C.1.A.-1 Sonepat Dated 25.03.2023 Time- 4.00 PM, Mobile No.92546-74470. No.92546-74470.”

3. On 25.03.2023 Tinu Kumar @ Tinku and Parchand were arrested and suffered their disclosure statements. Tinu Kumar @ Tinku

disclosed that he was a partner in a liquor vend with one Pardeep Chahal. Parchand Kumar was employed at the liquor vend of Pardeep Chahal. He (Tinu Kumar @ Tinku) had met one Vivek son of Suresh and Rajiv son of Dharampal all of whom planned to purchase liquor at less rates and after pouring the same in empty liquor bottles of expensive brand and by affixing holograms and labels decided to sell the same. For the said purpose, a house was taken on rent at village Shahpur, Sonapat from Jaideep son of Jai Chand. One Avdesh Shukla had procured fake labels and holograms.

On 26.03.2023 accused Vivek son of Suresh was arrested and stated that he along with Virender @ Binder (petitioner) had taken a house on rent in Pawati Road, Samalkha, Panipat where they used to do the work of illicit liquor. Virender @ Binder used to procure illicit liquor without any documents from Chandigarh. The illicit liquor 999 Power Star Fine Whisky for sale in Chandigarh only and 999 Power Star Fine Rum was procured and taken to the rented premises of Tinu Kumar @ Tinku where it was bottled in other liquor bottles of expensive liquor and by affixing fake holograms and labels would be sold in Delhi. It was only Virender @ Binder who knew as to from where he brought the illicit liquor from Chandigarh to Samalkha. Vivek got recovered multiple boxes of illicit liquor. Similarly, on 27.03.2023 accused Rajiv son of Dharampal was arrested and got recovered empty bottles from a scrap dealer.

On 29.03.2023 Avdesh Shukla and Sajjan were arrested and disclosed the manner in which the offence was committed. Multiple labels of fake liquor, liquor boxes, caps, etc., came to be recovered from his house. During investigation the rent agreement and affidavit of the house where accused Tinu Kumar @ Tinku used to prepare/affix holograms and labels on the illicit liquor were obtained from the owner of the house.

The report under Section 173(2) Cr.PC was presented against Tinu Kumar @ Tinku, Parchand Kumar, Vivek, Rajiv @ Kala, Sajjan and Avdesh Shukla.

3. The Counsel for the petitioner contends that he has been falsely implicated in the present case. In fact the name of the petitioner figured in the disclosure statement of the arrested accused which had no evidentiary value. Pursuant to the interim order by this Court, he had joined investigation. Merely because he did not confess to have committed the offence did not mean that he had not co-operated with the investigating agency. Therefore, he was entitled to the concession of anticipatory bail. Reliance is placed on the judgment of Hon'ble Supreme Court in ***Santosh Vs. State of Maharashtra (2017) 9 Supreme Court Cases 714***, to contend that not confessing to have committed the offence would not amount to non co-operation.

4. The Counsel for the State on the other hand contends that the petitioner was named during the course of investigation by his co-accused. As per the investigation, the petitioner used to bring 999 Power Star Fine Whiskey for sale in Chandigarh only and 999 Power Star Fine Rum from Chandigarh. The same was converted into the other brands of higher value for further sale. On the arrest of co-accused Vivek a friend of the petitioner, his mobile phone was recovered and a voice message was found on the Whatsapp application sent by the petitioner talking about illicit liquor. As per the tower location of the mobile phone used by the petitioner, it was repeatedly found near village Shahpur, District Sonipat where he along with his co-accused had taken a premises on rent to bottle illicit liquor. Though the petitioner had joined the investigation, he had refused to divulge his bank accounts and feigned ignorance towards the fact as to how illicit liquor

was recovered from the property leased out by him and his co-accused. Therefore, it was not a confession that the investigating agency wanted but explanations/clarifications regarding certain aspects of investigation which were being stonewalled by the petitioner which amounted to non co-operation. Even otherwise, as the offence was *prima facie* established from the evidence available on record, the petitioner was not entitled to the concession of anticipatory bail.

5. I have heard learned Counsel for the parties.

6. The Hon'ble Supreme Court in the case of "***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***", has 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***".

7. A perusal of the record would reveal that the name of the petitioner figured in the disclosure statement of his friend and co-accused Vivek as per which the petitioner used to procure illicit liquor from Chandigarh bring it to Haryana when all the accused bottled the same in expensive brands to sell at a higher price. A mobile phone of Vivek was recovered and a voice message was found sent by the petitioner pertaining to the sale of illicit liquor. Further, the location of the mobile phone of the petitioner had been found repeatedly at village Shahpur, District Sonapat where the accused had taken the premises on rent to bottle illicit liquor. On joining investigation, he refused to disclose his bank accounts and refused to answer the queries put to him. Therefore, not only is the offence *prima facie* established but the petitioner is deliberately stonewalling the investigation.

Therefore, the custodial interrogation of the petitioner is certainly necessary to take the investigation to its logical conclusion.

8. In view of the above, I find no merit in the present petition and the same stands dismissed.

9. However, the observations made hereinabove are only for the purposes of deciding this anticipatory bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

March 04, 2024
Vinay

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