

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41720-2024
Reserved on: 10.09.2024
Pronounced on: 27.09.2024

Brij Pal Rana ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
203	22.06.2024	Chhappar, District Yamunanagar	406, 420, 467, 468, 471, 473, 120-B IPC and Sections 61(1)(a) of Punjab Excise Act 1914 (Haryana Amendment Bill 2020) to which Section 7, 8/13 of PC Act have been added later on

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.

2. As per paragraph 6 of the bail petition, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	140	17.06.2023	61 of Excise Act	Radaur
2	352	14.04.2024	61(1)(a) of Excise Act	City Yamuna Nagar
3	93	04.05.2024	61(1)(a) of Excise Act	Jathalana

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“That brief facts of the case are that on 21.06.2024 secret information was received to SI Gurmej Singh CIA-1 and his team members to this effect

that one canter bearing number HR-37E-3607 would come from Ambala side through Milk Majra toll plaza in which illegal liquor is loaded. Upon that information Nakabandi was started near village Pirthi Ka Majra and at about 05:30 PM the above aforementioned vehicle/canter apprehended by the police team. At that time the said vehicle was driven by co-accused Ramavtar (driver of the truck) on asking he produced Permit No PN241900070373 dated 20.06.2024 issued for purchasing liquor by Excise Department for 800 cases of quarts (750 ML quantity per bottle), 200 cases of pint (375 ML quantity per bottle) and 200 cases of nips (180 ML quantity per bottle) total 1200 cases of country made liquor marka NV Rasila Malta from M/S N.V. International Pvt. Ltd Badholi, Ambala (distillery i.e. manufacturing unit of liquor) to L-13 M/S Scotch Station Wines, Jagadhari, Yamuna Nagar (whole seller of country liquor). The permit was valid up to 26.06.2024 for purchasing liquor. The above said driver also produced pass no PS24190086850 dated 21.06.2024 issued by the Excise department on dated 21.06.2024 at 10:59:17 AM which was valid up to 13:59:00 PM dated 21.06.2024 on the request of D-2 M/S N.V. International Pvt. Ltd Badholi, Ambala (distillery i.e. manufacturing unit of liquor) to sell the liquor to L-13 M/S Scotch Station Wines, Jagadhari, Yamunanaga (whole seller of country liquor).”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.
5. The State's counsel opposes bail and refers to the reply.
6. It would be appropriate to refer to the following portions of the reply, which read as follows:

“ROLE OF PETITIONER

Petitioner/accused is a liquor contractor and has been allotted 10 zones as per record received from excise department. Co-accused Rinku was given licence L-13 (licence for wholesale premise of country made liquor) and petitioner Brijpal was silent partner in this L-13. He has given affidavit in excise department to allot L-13 to Rinku in excise year 2024-25. Even in excise year 2023-24, he was owner of L-13 which has received many such illegal consignments as revealed during course of investigation. Petitioner along with other co-accused including L-13 licensee and distillery persons as a part of criminal conspiracy used to dispatch and receive the non-duty paid liquor. Petitioner/accused was in

constant touch with co-accused in furtherance of conspiracy to dispatch truck loaded with liquor in illegal manner from Distillery. Certain call recordings clearly show that petitioner/accused was constantly guiding the driver on 21.06.2024. Audio recordings also clearly establish this claim. Further, truck seized with liquor is owned by him as revealed during course of investigation, though as per registration authority record, truck is in name of Balwinder Singh resident of Ambala. However, petitioner/accused is using this truck since last 29.06.2023. Further, diary seized in the present matter from the driver/accused as well as interrogation of accused has revealed that accused in connivance with co-accused had earlier also got dispatched and received liquor in illegal manner on various dates and paid the money in cash. Trucks loaded with liquor were dispatched in illegal manner without paying excise duty, permit fee etc. thereby causing huge revenue loss to government exchequer and wrongful gain for petitioner/co-accused themselves. In the present matter, he got paid Rs. 11.50 lac for receipt of consignment. Out of 96 consignments dispatched for district Yamuna Nagar since July 2023 to June 2024 by distillery out of 435 such illegal consignments, most of the consignments was received by petitioner. Statements recorded under sections 161 of CrPC of four such drivers clearly substantiate that approximately 25 illegal consignments of country liquor out of 96 consignments have been received by petitioner/accused in illegal manner during the period when he owned L-13 last year.

It is further revealed that out of 1200 cases of country liquor which were received in morning on 21.06.2024 at L-13 were immediately dispatched to liquor vends owned by petitioner in collusion with L-13 owner. 875 cases of country liquor were dispatched without obtaining L-34 (permit issued by excise department). 141 such cases have also been recovered which bear identical barcodes as recovered from truck during evening on 21.06.2024.

(B) Evidence against petitioner

(1) Truck in which illegal consignment of 1200 cases of country liquor was being transported is owned by petitioner as revealed during course of investigation.

(ii) CDR analysis of mobile phone being used by petitioner during relevant period as well as of co-accused clearly establishes that petitioner was in constant touch with co-accused specially driver, munshi employed at L-13,

officials deployed at distillery, owner of L- 13 etc.

(iii) Audio call recordings of petitioner relevant in present matter have been taken into police possession and transcripts thereof have been prepared which also substantiate that petitioner was constantly guiding/instructing driver and L-13 regarding receipt, transportation etc. of illegal consignment.

(iv) Diary recovered during course of investigation shows that driver had earlier also transported liquor consignments in illegal manner and amount of Rs. 1.97 crore shown as paid to distillery upon instructions of petitioner/accused.

v) Accused/petitioner owns 10 liquor zones in Yamuna Nagar and is silent partner in L-13 involved in present matter. Further, in last year, he was owner of such L-13 which received many consignments of liquor in illegal manner as revealed during analysis of Tally application data. Even on 21.06.2024, he got 875 cases of liquor dispatched to various liquor vends owned by him without even getting issued permits from excise department.

(vi) Interrogation of accused arrested as well as examination of witnesses during course of investigation has revealed that petitioner/accused have played crucial role in commission of offence being investigated in present matter.”

7. Pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, as per paragraph 4(xi) of the bail petition, the petitioner has been in custody since 27.06.2024. As per the custody certificate dated 08.09.2024, the petitioner's total custody in this FIR is 02 months & 08 days. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

8. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

9. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest

Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

10. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

11. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

12. In Vikash Kumar Gupta V. The State of Bihar, SLP 11952-2024, Decided on 11-09-2024, a Three-member Bench of Hon'ble Supreme Court, while granting bail, holds,

(ii) Since the petitioner has a track record of his involvement in cases under the Excise Act, it is directed that in case the petitioner is found involved in such like cases in future, it shall be taken as a misuse of the concession of bail.

13. The petitioner shall not repeat the offense and shall be bound by the abovementioned condition.

14. Given the background of allegations against the petitioner, it becomes paramount to protect the illicit liquors detection squad and their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

15. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In Mohammed Zubair v. State of NCT of Delhi, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon’ble Supreme Court holds that “The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.”
16. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.
17. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.
18. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

27.09.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.