

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

212

CRM-M-59007-2023
Date of decision: 06.02.2024

RAJIB KONWAR

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms. Sukhveer Kaur, Advocate
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.187 dated 28.10.2020, under Sections 420, 467, 468, 471 of IPC, and under Section 65 of Excise Act, registered at Police Station Shahpurkandi, District Pathankot.

ALLEGATIONS AGAINST THE PETITIONER

2. The allegations against the petitioner are that he has prepared forged and fabricated permit for obtaining ENA (Extra Neutral Alcohol), by using fake seals of Excise Commissioner, Guwahati.

The prosecution agency was set into motion on a complaint made by one Sukhdeep Kaur Bajwa, Excise Officer, Pioneer Industries Limited, Ranipur, Police Station Shahpurkandi, against the Directors and other persons involved in the company. The relevant extract of the same reads as under:-

"In nutshell the case of the prosecution is that the present FIR has been registered on the complaint moved by Sukhdeep Kaur Bajwa, Excise Officer,

Pioneer Industries Limited, Ranipur, PS Shahpurkandi against Directors and other persons involved in the company M/s Pioneer Industries Pvt. Ltd. Plot No.A-3, A-4, Industrial Growth Center, Defence Road, VPO Ranipur, Pathankot. Memorandum M/s Pioneer Industries Pvt. Ltd is D-2 license holder situated in District Pathankot. The licence holder is engaged in production of extra neutral Alohcol/Rectified Spirit/Denatured Spirit/Indian Made Foreign Liquor/Punjab Medium Liquor hereinafter referred to as ENA/RS/DS/IMFL/PML. The ENA produced by the unit is either consumed for production of IMFL/PML or is also sold to other license both within the outside Punjab. The unit receive permit for the transfer of ENA to liccensees situated outside Punjab. This is the permission from the importing state to transfer of ENA from Punjab to that particular State. Against such permit, a pass generated by the Excise authorities of the unit under the Punjab Liquor Permit and Pass Rule, 1932. The said pass contains to the entire record of the transaction and authorized the transport of intoxicant. As per the Punjab Liquor Permit and Pass Rules 1932, the unit has to provide the Excise Verification Certificates, certifying that the intoxicant has reached the destination as per the document. These EVC's are certified by the Excise officials of the receiving State. A sudden increase in the issue of import permit by the Assam Excise Department drew the attention of the excise officials of the unit. For the verification of the genuineness of the excise permits, an email was sent to the Additional Excise Commissioner, Assam on 22.10.2020, a letter was received from Sh. Sanjeev Kr. Medhi, Commissioner of Excise, Assam in which it is stated that permits for allotment of ENA were not issued from this office. The licence of applicant-accused Rajib Konwar was issued for a period of 12.06.2013 to 11.06.2016 which was invalid. The name of the license as Mr. Rajib Konwar, resident of Duliajan Gaon, Anandanagar, PO @ PS Duliajan, District Dibrugarh, Assam and number of permit 31. After receiving the letter from the Government of Assam, it is clear that M/s Pioneer Industries Limited has tendered false documents to the Excise Authorities. Permits are official documents and tendering the false documents have committed fraud with the State Government. After giving the documents to Excise Officials by Sh. Manohar Shrama, M/s Pioneer Industries Limited have committed offence in various sections and Punjab Excise Act, 1914."

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner, in his asking for the hereinabove relief, has made the following submissions:-

- (i) Petitioner has been falsely implicated in the present case;*
- (ii) The allegations whether the permits are forged and fabricated are yet to be established;*
- (iii) The petitioner is behind the bars for the last more than 04 months, and the trial is yet to commence;*
- (iv) The conclusion of trial will take long time.*

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. On the last date of hearing i.e. on 06.12.2023, the learned State counsel was directed to file reply, detailing therein, the role of the present petitioner, as well as the incriminating evidence collected so far.

5. Affidavit dated 20.01.2024 of Sh. Daljinder Singh Dhillon, PPS, Senior Superintendent of Police, District Pathankot had been filed on behalf of respondent-State. The same is taken on record. A perusal of the affidavit reveals that 31 fake permits were found in the name of the present petitioner, and the tanker which was loaded with ENA (Extra Neutral Alcohol), from Pioneer Industries, Ranipur, was in fact unloaded in the company of the present petitioner in Assam. A perusal of the affidavit further reveals that the co-accused, who has filled up this ENA (Extra Neutral Alcohol), from the tanker, was subsequently arrested by the UP Police, and the FIR was registered against them. During investigation it was found that the present petitioner on fake permits ordered ENA (Extra Neutral Alcohol) from Pioneer Industries, Ranipur, and one more case was registered against the company of the present petitioner at Guwahati.

6. The learned State counsel has placed on record the custody certificate issued by the Superintendent of Sub Jail, Pathankot. The same is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 04 months and 17 days, as of today. Learned State counsel on instructions, imparted to him by ASI Kuldeep Raj, submits that out of the total 14 prosecution witnesses cited in the final report, none has been examined till date. Learned State counsel further submits that the charges are yet to be framed by the learned trial Court concerned, and the offences are triable by the Court of Judicial Magistrate First Class.

ANALYSIS

7.. “*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.

8.. 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.

9. 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."

10. 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.

11. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

12. The reason for forming the above inference emanates from the factum that:- (i) Though the petitioner is involved in other three cases, but in two cases he has been granted the relief of anticipatory bail; (ii) Out of the total 14 prosecution witnesses cited in the final report, none has been examined till date; (iii) The charges are yet to be framed by the learned trial Court concerned, and the offences are triable by the Court of Judicial Magistrate First Class concerned; (iv) No fruitful purpose

would be served by keeping the petitioner behind the bars, who has already undergone actual custody of 04 month and 17 days as on today; (iv) Trial is not likely to conclude anytime soon.

FINAL ORDER

13. Considering the hereinabove made discussion, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.
14. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petition.
15. All pending application(s) stand disposed of accordingly.

06.02.2024
amandeep

(KULDEEP TIWARI)
JUDGE

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