

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

CRM-M-356-2024

Date of Decision:-21.02.2024

Surender Singh.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

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

Present:- Mr. Prashant Singh Chauhan, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant 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.407 dated 12.12.2003 under Sections 120-B, 420, 467, 468, 471 IPC and Section 61(1)(c), 63A and 72A of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) registered at Police Station Dharuhera, District Rewari, Haryana.

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

“ Sir, it is requested to you that I Ashish Yadav Excise Inspector posted in Rewari that today along with staff in a official vehicle reached at Sabi Flyover Delhi Jiapur Road after receiving the information. That where/Sub Inspector Subchander along with Police officials in official car bearing registration No HR-36-GV-1871 were there who presented one TATA car bearing registration no. HR-47-F-3237 having TCL on the body and the back cabin is locked and Driver Pawan son of Udayram resident of Kasola District Rewari and Ajay

son of Ram Singh and Arjun son of Santosh resident of Katda Police Station Pillor distriet Kanpur UP were apprehended and produced, that aforesaid driver Pawan Kumar was made open the lock of the back cabin upon which huge amount of material was found in the same which was taken sent to a safe place and the material was taken out and upon checking five bottles of Old Monk liquor, 10 quarters of country made liquor without any mark of which ADS was mentioned on its cap and one white plastic bag from are caps if Old Monk was recovered which were counted and were 3530 in total and one plastic bag there were caps of country made liquor and the same was upon which 4346 caps were found and total and each cap ADS was written and three machines for fitting the cap was out of which two machines are of gray colour and one machine of green colour and out which one gray and green machine was for sealing the caps of Old Monk Liquor and one gray machine sealing the cap of country made liquor and one plastic bag there were 8 bottles with the 500 ML, On which two bottles were having batch no. 0016127866 five bottles of 0016083718 and one bottle 0015523377, 12 bottles of one liter having BE IC Mark were found in a plastic cartoon in which 3 bottles of batch no.0015287159, nine bottles 0015261409 having mark Bush International Flavour and Fragrances India Private Limited 720 EMC 2nd Avenue, SRI City 517646 which are manufactured from Andhra Pradesh Which used for making colours, one white drum having which is 65 liters on which plastic Caramel Sprit Soluble is written which upon measuring is found to be 10 liters out of which 2 samples of quarter were taken in one blue drum having a small cap which is also field chemical in which there approximately 10 liters of chemical out of which two samples quarter are also taken and two green drum of 50 liters out of which one of mark and in the second drum 8 liter of ENA (EXTRA NAUTRAL ALCOHOL) alcohol is present and two samples also taken and two big drum of 200 liter colour blue which has been covered with black colour caps are empty and two plastic pipes of green colour measuring 1 inch and ½ inch and one side Iron nipple are present and upon measuring the 20 feet and thereafter empty cardboard cartoons which were found 60 in number upon which spice county made liquor, ADS SPRITS PRIVATE LIMITED VILLAGE BHUTIYAN DISTT JHAJJAR 124201 is written and empty cardboard cartoon of Old Monk were counted which were found to be 5 in number in which 213 empty cardboard bottle cartoon

are present on which OLD MONK XXX RUM MFG MOHAN MEANTIN LIMITED ESTD. 1855 REG. OFFICE SOLAN HP is written, and one cartoon which is in plastic bag and in each cartoon 355 quarter are there and total empty quarter are 13490 bundle of the sheet on which and on spice county made liquor fresh Mota is written who has been recovered and upon counting the same were 950 and of each sheet there are 45 label which are 42750 in total and one bottle of Old Monk was recovered which were countered and were found to be 875 sheets and on each sheet there are 9 labels which are 7875 in total and 3 marka of sheet of Hologram was also recovered and in the first bundle and there are 508 sheets and of each there are 60 holograms and which are total 30480 in hologram in number in the second bundle 384 sheet and there are each sheet there are 64 hologram which are 24676 hologram in number and third bundle is having 140 sheet and each there are 64 hologram which are total 8960 hologram in number and in three bundle of total 302 sheets and 64016 total number hologram are recovered which are prima facie appears to be forged and 3 separate bundles were prepared and from each bundle one hologram sheet from each bundle was taken as a sample and there are recovered liquor label and hologram and are recovered country made liquor samples were stamped as SD/ That Pawan and his accomplices namely Ajay and Arjun by keeping illicit liquor, forged labels and hologram using have as genuine were found, appropriate action shall be taken against them Sd/-Ashish Yadav, Inspector Excise Department Rewari dated 11.12.2023." "

3. Accused Pawan, Ajay and Arjun were formally arrested and interrogated. They stated that illicit liquor was being manufactured in village Saharavan, Manesar. Pawan also disclosed that the liquor vend belongs to S.S. Wines and from the said premises 156 crates of illicit liquor were recovered. One Sanjay Kumar was arrested on 12.12.2023 and disclosed about the involvement of Sandeep, Naresh and Dinesh. He also disclosed that he and Sandeep along with Dinesh were having a partnership in the liquor business with a share of 50%, 25% and 25% each. Sanjay got recovered Rs.80,000/-.

Naresh was arrested on 12.12.2023 and disclosed about the involvement of Surender Singh (petitioner), Pawan, Sanjay, Prashant @ Sonu and Kunal and also got recovered Rs.20,000/-. He also got demarcated the premises of Lucky Wines and 150 Crates of illicit liquor were recovered from the said premises. From the premises Prashant son of the owner (Paramjit Singh Raghav) of Lucky Wines was arrested. He disclosed that he had sold 25 Crates of liquor to the co-accused Shyam.

Pawan and Ajay got demarcated the premises where the illicit liquor used to be manufactured and got recovered empty chemical/water/spirit drums along with a water tanker.

Naresh got recovered Rs.20,000/-. The equipment used for preparation of illicit liquor was recovered at the demarcation of the accused Arjun and Sanjay.

The record pertaining to liquor vends of Lucky Wine Group and S.S. Wines were obtained. It transpired from the record that Sandeep was the only licensee qua the vend of S.S. Wines situated at IMT Manesar and that he had not sublet the same for operation to anybody else.

Dinesh Kumar, Shyam Singh and Inderjit Singh @ Indu were arrested.

Accused Amrik @ Amit was arrested on the disclosure statement of Pawan. The investigation revealed that Amrik @ Amit had been using the bank accounts of his brother-in-law Sukhwinder Singh along with a Sim Card issued in the name of Sukhwinder Singh.

A Vehicle bearing no.HR-36-AP-5450 belonging to the petitioner Surender was taken into possession. The accused Amrik Singh got recovered an Eicher Tractor from the house of co-accused Pawan.

On the demarcation of Pawan, Mukesh Sharma was arrested

and a Fortuner bearing No.HR-51-AD-0077 was recovered from him. Prashant and Sanjay got recovered Rs.3,00,000/- + Rs.80,000/- respectively whereas Dinesh got recovered Rs.20,000/-.

As per the disclosure statement made by Prashant accused Shyam had purchased 25 Crates of illicit liquor and Shyam got recovered Rs.10,000/- from the proceeds of sale/profit of sale of the illicit liquor.

Pawan accused disclosed that at the instance of his brother co-accused Surender (petitioner) he had purchased the holograms and labels from accused Mukesh and Mukesh got demarcated the place where the crates had been handed over by him to Surender (petitioner). Amrik Singh @ Amit got demarcated the shop from where he had purchased the cap sealing machine and the flavour used for preparing the illicit liquor.

On 19.12.2023 Mukesh Kumar disclosed that the petitioner-Surender had paid a sum of Rs.15,00,000/- as cash and had transferred the rest of the amount in his account which was the sale consideration for the purchase of 15 lacs caps, make ADS, 34,250 packing crates of country made liquor and 1060 packing crates of old monk liquor and 12,000 caps of old monk. He also got recovered a sum of Rs.2,90,000/- along with the equipment used for preparing counterfeit labels/boxes. He stated that he had handed over the counterfeit labels to the petitioner and Pawan.

The vehicle used by the petitioner-Surender for supplying illicit liquor bearing registration number RJ-02-CD-5151 was taken into possession.

Inderjeet got recovered the motor cycle along with an amount of Rs.14,400/-. Similarly Mukesh Sharma also got recovered dyes used for preparing counterfeit articles along with an amount of Rs.1,10,000/- out of the proceeds received by him from petitioner-Surender.

As per the investigation a vehicle Tata bearing registration number HR-47-F-7237 which was apprehended at the spot stands registered in the name of petitioner-Surender and Pawan, the driver of the vehicle is the brother of Surender.

The report under Section 173(2) Cr.PC stands submitted against 11 out of the 24 accused.

The complicity of the petitioner had been found in the following cases:-

- i. FIR No. 131 dated 25.04.2017, U/S 147, 148, 323, 285 of IPC & Section 25 of the Arms Act, PS: Kasola, District Rewari. Under Trial, NBW have been issued as he REWARI has jumped bail, now case is fixed for 16.05.2024).
- ii. FIR No. 257 dated 12.09.2018, U/S 420, 323, 336, 279 & 120-B of IPC, PS: Khol, District Rewari. (On bail, now case is fixed for 28.05.2024).
- iii. FIR No. 330 dated 13.10.2020, U/S 420, & 120-B of IPC & Section 61-4-20 of the Excise Act, PS: Kasola, District Rewari. (On bail, now case is fixed for 03.04.2024).
- iv. FIR No. 107 dated 10.05.2021, U/S 188 of IPC & Section 51B (DM) Act & Section 61- 4-20 of the Excise Act, PS: Kasola, District Rewari. (On bail, now case is fixed for 31.05.2024)
- v. FIR No. 17 dated 15.01.2023, U/S 19/54 and Section 54-A of the Excise Act, PS: Shahjahanpur, Rajasthan. (On bail, under trial)

4. The Counsel for the petitioner contends that he has been falsely implicated in the present case. No offence as alleged was made out. In fact he was named in the disclosure statement of his co-accused which had very little evidentiary value. The offence, if any, was under the Excise Act. As the petitioner was ready and willing to join investigation, he was entitled to

the concession of anticipatory bail.

5. The Counsel for the State on the other hand has filed reply dated 19.02.2024 by way of affidavit of Mr. Sanjeev Kumar, HPS, Deputy Superintendent of Police, District Rewari in Court today, which is taken on record. While referring to the said reply he contends that the petitioner was the real brother of Pawan who was arrested on the spot. The vehicle in question bearing no.HR-47-F-7237 stood registered in the name of the petitioner. The complicity of the petitioner came to fore initially in the disclosure statement made by his brother Pawan. Later on during the course of investigation it transpired that the petitioner and certain others were running the entire operation of the manufacturing and sale of illicit liquor. He had procured counterfeit caps, labels and packing material from co-accused Mukesh Sharma. The analysis of Surender's bank account had revealed that there were transactions of more than Rs.65 lacs in the last 06 months into the account of his father and brother namely Pawan. Further the petitioner had transferred an amount of Rs.5 lacs into the account of accused Amrik Singh and Rs.6 lacs into the account of Amrik Singh's brother-in-law Sukhwinder. Clearly, the petitioner was the mastermind of the entire crime. Even otherwise, he was a habitual offender with multiple cases including those of similar nature. As the offence stood *prima facie* established and the investigation was to be taken to its logical conclusion, no ground for grant of anticipatory bail was made out and the present petition was liable to be dismissed.

6. I have heard learned Counsel for the parties.

7. 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”.

8. A perusal of the investigation conducted so far would undoubtedly establish that the petitioner is one of the main accused. His brother was arrested at the spot while driving the vehicle registered in the name of the petitioner. A huge quantity of illicit liquor was recovered from the said vehicle. Further during the course of the investigation it has been clearly found that the petitioner had paid a huge amount of money to various persons for the purpose of purchasing of caps of bottles, packing crates, counterfeit labels/boxes etc., which were used to bottle and sell the illicit liquor. Therefore, the offence is *prima facie* established. Further he is an accused in multiple cases including some under the Excise Act and, therefore is a habitual offender. Even otherwise, the investigation has to be taken to its logical conclusion, for which the custodial interrogation of the petitioner is certainly required.

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

10. 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

February 21, 2024
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>