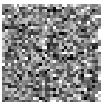


2025.PHHC:024675



108

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2849-2025
DECIDED ON: 20.02.2025

PINTU KUMAR ALIAS PINTU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Surikshan Sharma, Advocate
for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, has been invoked for grant of regular bail to the petitioner in case FIR No. 458 dated 26.07.2024 under section 318(4) BNS/420 IPC, 338 BNS/467 IPC, 336(3) BNS/468 IPC, 340(2) BNS/471 IPC, 61(2) BNS/ 120B IPC, 345(3) BNS/482 IPC, 347(1) BNS/483 IPC, 61-4-2020 Excise Act, registered at Police Station Industrial Area, Panipat, Haryana. (Annexure P-1).

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy of the written complaint is presented - To, The SHO, Police Station Sector 29, Panipat, Jai Hind. Yesterday on 25.07.24, myself SI along with ASI Virender 80, including HC Rakesh 26 in Government vehicle Bolero No. HR-06GV- 8257 were present for patrolling at Chautala Road, Panipat,

when the special informant met the SI and informed that a truck number UP-50BT-1826 is parked near Shri Balaji Parking Yard, Siwah, near Gaushala Road and a large quantity of illicit liquor is loaded in the truck. When the SI went to the place told by the special informant and saw that the truck number UP-50BT-1826 was parked there and there was no number plate on the rear side of the truck. In which two persons were sitting, and myself SI detained both the persons and asked about their names. The person sitting on the driver's seat told his name as Subodh Kumar s/o Ramratan Rai, resident of village Bahwalpur Ward Number 10 Post Sehan, ShahpurKhurd, District Vaishali Bihar and the person sitting on his side told his name as Sachin Kumar s/o Vidyanand Rai, resident of Madaideeh Post MaraiDeeh District Vaishali Bihar. Myself SI when checked and asked above said Subodh and Sachin found that illicit liquor boxes were loaded under the cover of limestone sacks which were loaded in a large quantity of 50 kg. bags of limestone sacks. For checking the vehicle, Labourers were required to unload them. But due to rain and time being off, labourers could not be arranged. Officers were informed about the situation. And then truck number UP-50B-1826 was parked in Shri Balaji Parking Yard, Gaushala Road Siwah and SPO Ashok Kumar 150 and HGH Rajbir 2031 of Thana Sector 29 Panipat were put on surveillance duty over truck number UP-50B-1826 and Subodh Kumar s/o Ramratan Rai, resident of village Bahwalpur ward number 10 post Sehan, ShahpurKhurd District Vaishali Bihar and Sachin Kumar s/o Vidyanang Rai, resident of Madaideeh Post MaraiDeeh district Vaishali Bihar were put under surveillance by Police Ahat Staff CIA- 3 Panipat and report number 42 dated 25.07.24 at 09:26 was got registered in Thana Sector 29 and a copy of the report was obtained. Today on 26.07.24, myself SI along with ASI Krishna 18, ASI Virendra 80, HC Rakesh 26, HC Manjeet 187, HC Sandeep 375 in Government Vehicle Bolero No. HR-60GV-8257 driver EHC Rajesh 1375 along with Subodh Kumar s/o Ramratan Rai, resident of village Bahwalpur ward number 10 post Sehan, ShahpurKhurd district Vaishali Bihar and Sachin Kumar s/o Vidyanand Rai, resident of Madaideeh Post MaraiDeeh District Vaishali Bihar have reached Shri Balaji Parking Yard Gaushala Road Siwah. Where SPO Ashok Kumar 150 and HGH Rajput 2031 of Police Station Sector 29, Panipat were found present, myself SI later gave them appropriate instructions and myself SI from my phone number 8168510490 called Vikas Kumar, Inspector, Excise Department, Panipat on his phone number 9560070142 and informed him about the situation and asked him to come to the spot, the Excise Inspector came to the spot in his private car after sometime, myself SI arranged for labourers and checked the truck no. UP-50B-1826 in front of Vikas Kumar,

Inspector, Excise Department, Panipat by removing the tarpaulin and instructed HC Manjeet 187 to do videography as per BNSS guidelines. Upon checking, 34 sacks of limestone powder, weighing 50 kg. each, were found loaded at the rear of the truck and under the cover of the sacks, the truck number UP-50B-1826, was found loaded with illicit liquor boxes in which quarter size liquor boxes, half size liquor boxes and boxes of full size bottle liquor brand BLACK TIGER are loaded. Myself SI got all the liquor boxes down from the truck and counted them in different groups according to quarter size, half size and full size bottles. There were a total of 200 boxes of quarter size liquor in which each box contained 48 quarter sized liquor (9600 quarters) and a total of 390 boxes of half size liquor in which each box contained 24 half liquor (9360 half size) and 380 boxes of full size bottles of liquor, each box containing 12 full size bottles of liquor (4560 bottles), total 11640 bottles of which a total of 970 boxes of liquor were recovered. Out of the recovered quarter liquor boxes, only 2 quarter size liquor boxes, out of recovered half size liquor boxes only 2 half size liquor boxes and out of the recovered full size bottle liquor boxes only 2 full size bottles of liquor were taken out by the Excise Inspector for checking and as sample. On checking, each bottle, quarter size, half size and full size bottle of brand BLACK TIGER Blender Bottled Put. Ltd. 14 Nariwala, Rajban Road, Paonta Sahib, Distt. Sirmaur (HP) LIC No. 10021062000004 Brand "Coad: 0765 NOT FOR SALE IN HIMACHAL PRADESH DUTY NOT PAID TO HP GOVT. FOR SALE IN EXPORT OVERSEAS ONLY is written. On full size liquor bottle BATCH NO. 02 MAR 24 and on Quarter size and half size liquor BATCH NO. 02 JULY 24 is written. On the demand of myself s the above mentioned driver Subodh took out the vehicle Bilty and other documents inside the truck and presented them to the SI. On checking, the Bilty had WAY BILL NO. 30815763004 GENERATED DATE 23.07.2024 4:56 PM GENERATED BY 02BEH PS279 4MEZY FROM GSTIN: 02BEH PS279 MEHAK MINERAL CHEMICAL HIMACHAL PRADESH DISPATCH FROM VILL, AMBOYARAJPUR ROAD AMBOYASIRMAUR HP-13025 TO GSTIN MS BHAWANI TRADING CO WEST BENGAL SHIP TO DARJLING ZONE SILIGURI WB-734001 Vehicle detail Doc No. BROGA8732 LIME STONE POWDER Quantity 20 QTY Rate 5860 Amount 123060 VIKRANT TRANSPORT COMPANY Shri "Tejeshwari Market Near OBC bank Naraingarh Road KALA AMB is written and the photocopy is TRANSPORT DEPARTMENT BIHAR FROM NO. 47. According to the photocopy of RC, the vehicle truck number BR06GA8732 Engine Number B591803111G6316052 Chassis number MAT466417V319538N is written. According to the RC of truck, its real owner is RAJAN RAY S/O SIYARAM

RAY ADDRESS: AT- KUTUBPURKHALSA PO SAIDPUR KUTUBPUR PS BIDUPURVAISHALI BR 84450 VEHICLE CLASS GOODS CARRIER REG. DATE is 02-SEP-2011 and the above said driver Subodh presented the photocopy of DL No. UP5820120007512 to myself SI who found from the photocopy of RC and other documents that the original RC number of the truck is UP-50BT- 1826, engine number is B591803111G6316052 Chassis number MAT466417V319538N, which is a fake RC number UP-50BT-1826 installed on the vehicle. Vikas Singh, Inspector, Excise Department, Panipat prepared separate bundle of both full size bottles of liquor and both half size liquor and both quarter size liquor and all the bundles were stamped by Vikas Singh with his seal VS/1. Sample seal was prepared separately and after using, he kept seal with himself. Vehicle Truck Number UP-50B-1826 TATA and 9598 quarter size liquor and 9358 half size liquor and 4558 full size liquor bottle liquor, all 6 bundles of sample liquor sealed with stamp VS/1, 34 sacks of lime stone powder, bilty, photocopy of RC, truck, photocopy of DI was taken into police custody as evidence through property seizure form signed by above accused Subodh and Sachin and witnesses and Vikas Singh, Inspector, Excise signed: Accused Subodh Kumar s/o Ramratan Rai resident of village Bahwalpur ward number 10 post SehanShahpurKhurd district Vaishali Bihar and Sachin Kumar s/o Vidyanand Rai resident of Madaideeh post "GaraiDeeh district Vaishali Bihar have committed the crime under section 318(4), 338, 336(3), 340(2) 61(2), 345(3), 347(1) BNS-61-4-2020 EX. Act by keeping 970 boxes of illicit liquor in their possession and putting fake RC number on the vehicle. Hence, a written complaint has been lodged with the police station under HC Manjeet 187, after which the registered case number should be informed and another investigator should be sent to the spot for further investigation. Myself SI along with my colleague are actively investigating at spot. At: Chautala Road to Gaushala Road Shri Balaji Yard Parking Siwah Panipat, SI Subhash Chandra 910/PPT CIA-3 Panipat Date: 23.10.23. At Police Station arrived on receipt of above mentioned Tahrir by HC Manjeet 187 in Police Station. FIR No. 458 dated 26.07.2024 under Section 318 (4), 338, 336(3), 340(2), 61(2), 345(3), 347(1) BNS-61-4-2020 EX. Act Police Station Sector 29 Panipat FIR registered. Copy of FIR prepared by computer. Copy of Police File along with original Tahrir is being sent to the spot on 10th June under HC Manjeet 187 by hand for further action. In this case, second investigator SI Ratan Singh 510 was sent to the spot. The copy of FIR will be sent through Post and E-MAIL to Higher Officials. The case was registered in the CCTNS code of SHO Sahab and in the presence of ASI Santram 928.”

3. Contentions:**On behalf of the petitioner**

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statement suffered by co-accused namely Sachin and Subodh. He further submits that in this matter, the petitioner is in custody since 07.08.2024, wherein investigation is complete, challan stands presented and nothing is to be recovered from the petitioner.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that the petitioner is a habitual offender, as he is involved in another case also.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 6 months and 7 days and except disclosure no incriminating material has been put forth by the prosecution to connect the petitioner with the alleged commissioning of offence added with the fact that investigation is complete, challan stands presented on 24.09.2024, charges are yet to be framed and total 25 prosecution witnesses are to be examined. This Court is sanguine of the fact that conclusion of trial shall take considerable, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein "*bail is a rule and jail is an exception*" and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh***

vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131. Relevant paras of the said judgment is reproduced as under:-

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet

is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

*5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in *In Re-Inhuman Conditions in 1382 Prisons*, 2017(4) RCR (Criminal) 416; 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658*

*6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in *Nikesh Tara chand Shah v. Union of India*, 2017 (13) SCALE 609 going back to the days of the Magna*

Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”

Therefore, to elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in “**Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna**”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “*Baljinder Singh alias Rock vs. State of Punjab*” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

In the afore-said terms, the present petition is hereby allowed.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

20.02.2025

Meenu

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