

2025:PHHC:055136



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

CRM-M-20435-2025

DATE OF DECISION: 21.04.2025

SURMUKH SINGH DHALIWAL

...PETITIONER

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gurjeet Singh Kaura, Advocate and
Mr. Rangat Joshi, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)1. Prayer

This petition has been filed under Section 482 of BNSS, 2023 seeking anticipatory bail to the petitioner in FIR No. 243, dated 10.12.2023, under Sections 467, 468, 471, 420, 483 and 120-B IPC and Sections 61, 4 and 20 of Excise Act, registered at Police Station Dujana, Jhajjar.

2. Facts

Prosecution story, set up in the present case as per the version in the FIR reads as under :-

“To, Station House Officer, Police Station Dujana, Jai Hind. Today 1 A.S.I. alongwith H.C. Kuldeep 965, E.H.C.

Sunil 308, C. Pardeep 834 in official vehicle bearing registration No. H.R. 14 G.B. 1030 being driven by E.H.C. Bhagat Singh 942 were present at Jhajjar Rohtak Road, just ahead of Bypass bridge Dujana with regarding to patrolling and checking of crime. Then an informer met me A.S.I. and gave information that Birbal son of Chhoga Ram, resident of Madrena Kulani, Jodhpur, Rajasthan is running a business of supplying illicit liquor. Birbal after loading illicit liquor in his Tata 2518 Truck Bearing registration No. UP 12T-9501 will go towards Rewari via Rohtak to Jhajjar in few minutes. If nakabandi is hold here then Birbal can be nabbed with truck loaded with illicit liquor. I A.S.I. told the information to official companions and after getting freed secret informer, we started nakabandi on Jhajjar Rohtak Road, just ahead of bypass bridge at Dujana. At about 1/2 hours, one Truck bearing registration No. UP-12T-9501 was seen coming from Rohtak side, to which, I A.S.I. got stopped with the help of official companions and checked the same and found nuber plate as UP 12T 9501. On asking the whereabouts of the person sitting on driver seat, he disclosed his name as Birbal soh of Chhoga Ram, resident of Bishnoia Ka Vas, Madrena Kolani, Near Krishi Upaj Mandi Jodhpur Rajasthan. Above mentioned Birbal was asked about the goods loaded in the vehicle then Birbal told that plastic Dana is loaded in the vehicle and he produced Bilty and bill of 450 Bags of plastic Dana. Truck No. UP 12T 9501 was checked and from the backside of the truck, boxes of different brands of liquor were recovered. O demanding documents regarding liquor, above mentioned Birbal could not produce any license or permit and documents and on my asking, he produced colored photocopies of R.C. of truck, Permit which is valid till 25 October 2024 and Insurance which is of United India Company and was valid till 12.10.2023. After taking out boxes of liquor from the truck and on counting, 60 boxes of All Season brand liquor each containing 12 bottles, 145 boxes of Mac Dowel brand liquor each containing 12 bottles, 94 boxes of Royal Challenge brand liquor each containing 12 bottles, 48 boxes of Mac Dowel Brand liquor quarter each containing 48 quarters and 28 boxes of Royal Challenge brand liquor quarter each containing 48 quarters were found. Total 299 boxes of bottles and 76 boxes of quarters were recovered, total 375 boxes of English liquor were recovered. From total

recovered boxes of liquor, one bottle each and one quarter each of English liquor were taken as sample and samples parcels were sealed with seal impression V.S. and remaining boxes of English liquor brand, 60 bottles of All Season English brand, 145 boxes of bottles of Mac Dowel Brand liquor and 48 boxes of quarters and 94 boxes of bottles of Royal Challenge brand liquor and 48 boxes of quarter and 48 boxes of quarter were sealed with V.S. and sample seal was prepared. Seal after use was handed over to H.C. Kuldeep 965. Recovered boxes of liquor and samples of liquor bottles and quarters and Truck Number UP 12T 9501, colored photocopies of Bill and Bilty and R.C. permit and Insurance were taken into police possession as evidence vide memo. Personal search of Birbal was conducted and 360 rupees from the pocket of his pant and one mobile phone mark Oppo was recovered and after preparing separate parcel of the same was taken into police custody. Above mentioned Birbal by possessing forged bill and bilty and illicit liquor in his possession has committed an offence under Section 467,468,471 IPC and 61/4/20 Excise Act. On that, an application for registration of case is being sent through E.H.C. Bhagat Singh 942 to police Station, After registration of case, case number be intimated. 1 A.S.I. is complainant of the case and hence, another Investigating Officer be sent on the spot for further investigation of the case. I A.S.I. is present on the spot. Place:- Jhajjar-Rohtak Road, just ahead Bypass Flyover Dujana. Sd/-Virender ASI ASI Virender 1143. Crime Branch Jhajjar. Dated 10.12.2023 at 8.45 A.M. M.No. 9992007075.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case, as he is neither named in the FIR nor present at the spot. It is further argued that though the confessional statement of the main accused namely Birbal was recorded on 10.12.2014 but he has never disclosed the name of the petitioner rather he disclosed the name of one Rohit Rana

and Niraj. It is contended on behalf of the petitioner that the report under Section 173 Cr.P.C. has been submitted against the main accused Birbal and except that there is no incriminating material against the petitioner to connect him in commissioning of offence.

Learned counsel for the petitioner undertakes that the petitioner is ready and willing to join the investigation and cooperate with the investigating officer.

Notice of motion.

On behalf of the State

At the asking of Court, Mr. Baljinder Singh Virk, Sr. DAG, Haryana appearing on advance notice accepts notice on behalf of respondent-State of Haryana and seeks dismissal of the present petition stating that the present case has been registered on the basis of secret information, the raid was carried out and huge quantity of illegal liquor was recovered from the vehicle bearing registration No. UP-12-T-9501, which was being driver by the main accused namely Birbal.

Learned State counsel, on instructions from ASI Mukesh Kumar, asserts that the petitioner does not deserve the concession of pre-arrest bail, as he is involved in other cases also and has been declared PO in one of the FIR, meaning thereby, he is not a person of clean antecedents.

Heard learned counsel for the respective parties.

4. **Analysis**

In the present case, the accusations against the petitioner and his co-accused are grave, as substantial amount of illicit liquor (lahan) i.e. 3588 bottles and 3648 quarters were seized from a truck

bearing registration No. UP-12-T-9501. The problem of illicit liquor production is particularly severe in both the States, especially given the recent fatalities linked to its consumption. The fact that the petitioner was not caught at the scene does not automatically grant him the right to anticipatory bail. The recovery of such a significant quantity of illicit liquor serves as a critical factor in justifying the denial of anticipatory bail to the accused.

On perusal of disclosure statement suffered by the co-accused Neeraj, made by co-accused Neeraj, it is clear that the petitioner has been attributed a specific role, that he was the individual who directed the co-accused Neeraj to transfer funds to other accused persons. Furthermore, the petitioner has a questionable background, as he is implicated in other cases of a similar nature. In one such case, he has been declared a Proclaimed Offender, as reported by ASI Mukesh Kumar. Additionally, the petitioner is also wanted by the Bihar Police.

The Apex Court in case **“Gudikanti Narasimhulu vs. Public Prosecutor, High Court of A.P.”; (1978) 1 SCC 240**, It has already been observed that the deprivation of freedom through the refusal of bail is not intended as a form of punishment but rather serves the dual purpose of ensuring justice. It has also been noted that it is reasonable to examine the background of an individual applying for bail in order to determine whether they have a criminal history, especially one that indicates a likelihood of committing serious offences while on bail.

More so, investigation is still going on in the present case. It is settled proposition of law that power exercisable under Section

438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in “State vs. Anil Sharma”; (1997) 7 SCC 187, held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

5. Decision

Keeping in view the afore-said facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby, dismissed.

(SANDEEP MOUDGIL)
JUDGE

21.04.2025
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No