

**IN THE COURT OF PRASHANT VERMA (UID No.0236) ADDITIONAL
SESSIONS JUDGE, TARN TARAN**

**Bail Application No 1784-2023
Date of Order : 04.07.2023**

Jaspal Singh aged 46 years son of Mukhtar Singh r/o village Ram Roni, (aluwl Khurd), Jhabhal, Tehsil and Distt, Tarn Taran.

.....Accused/petitioner

Versus

State

(First Bail application under Section 438 Cr.P.C.)

-O-O-

FIR No. 73 dated 12.06.2023, under Section 61 of the Punjab Excise Act, Police Station Jhabal.

-O-O-

Present : Sh.J.S Kot Advocate for the accused-applicant.
Shri Ravinder Singh Additional Public Prosecutor for the State.
ASI Karam Singh no. 631/Tarn Taran along with police record.

ORDER

1. The above named accused has filed this application for grant of pre-arrest bail under Section 438 of Criminal Procedure Code(hereinafter referred to as Cr.P.C.), in afore referred FIR.

2. Notice of the bail application was issued to the State and police record was requisitioned. Report of/ on behalf of investigating officer attested by the Additional Public Prosecutor about pendency of or of any former adjudication of bail application before or by any Superior Court under the provisions of Cr.P.C and the result thereof received. It was reported that neither any bail application relating to this case was pending and nor had it been decided earlier. Such a declaration also contained in the bail application.

Ahlmad had also reported that according to the information available in the CIS system, no other bail application relating to this case is pending or decided

by any Superior Court.

ABSTRACT OF FIR:

3. The present FIR was registered on the basis of secret tip off which was received by complainant ASI Dilbagh Singh on 12.06.2023, who was on patrol alongwith fellow police officials. He was informed that accused/applicant was habitual of distilling liquor at home and that if the raid was carried out, he could be nabbed red handed. Upon the receipt of information, FIR under section 61 of the Punjab Excise Act, 1914 was registered. When the police officials raided the house of the accused, he slipped away and could not be arrested. However 1000 kgs of lahan was recovered from the house of the accused.

ARGUMENTS RAISED BY LEARNED COUNSEL FOR APPLICANT/ACCUSED:

4. Contention of learned counsel for the accused-applicant is that the accused-applicant is innocent and has been falsely implicated in this case. There is no iota of evidence to connect the accused-applicant with the alleged crime. No offence is made out against accused-applicant. The accused-applicant is ready to join the investigation.

ARGUMENTS OF LEARNED ADDL. PUBLIC PROSECUTOR

5. On the other hand, main contention of learned Additional Public Prosecutor for the State is that the accused-applicant was very much involved in the crime and that the allegations so mounted by the prosecution were well founded. The custodial interrogation of the accused-applicant was required.

PREVIOUS ANTECEDENTS OF APPLICANT/ACCUSED:

6. ASI Karam Singh no. 631/TarnTaran suffered statement in the court on behalf of the investigating officer that except for the present FIR, no other criminal case is registered against the applicant-accused.

GUIDING PARAMETERS

As outlined in *Gurbaksh Singh Sibbia v. State of Punjab, (SC) : Law Finder Doc Id # 104574 reported in 1980 AIR(SC) 1632 Bhadresh Bipinbhai Sheth v. State of Gujarat and Another : Law Finder Doc Id # 705395 reported in 2015 AIR(SC) 3090 Sushila Aggarwal and others - Petitioners Versus State (NCT of Delhi) and another – Respondents : Law Finder Doc Id # 1674499 reported in 2020 AIR (SC) 831*

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; (b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence; (c) The possibility of the applicant to flee from justice; (d) The possibility of the accused's likelihood to repeat similar or other offences; (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people; (g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern; (h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused; (i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; (j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the course of events, the accused is entitled to an order of bail.

DISCUSSION:

7. Admittedly the accused was never apprehended red-handed at the spot and his presence at the place of recovery is not convincingly reflected in the police record. Till date the investigating agency has not obtained any document of title of the accused relating to the land/property from where alleged recovery had taken place. No statement of any neighboring person had been recorded under section 161 of Cr.P.C which may indicate that the property in question is in the possession or ownership of the accused. Recovery has already been effected. The proximity of recovery and the accused/applicant is a question of evidence which can be determined after the culmination of trial. Hence at the stage, accused applicant is

held entitled to the grant of anticipatory bail.

CONCLUSION:

8. In view of above discussion and observations, the application under adjudication is allowed. The accused/applicant is directed to join investigation *within 3 days from the date of order* and in the event of arrest, the accused/applicant be released forthwith on bail in the afore said case on furnishing bonds to the satisfaction of the investigating officer subject to the following conditions:

1. the accused-applicant shall make himself available for interrogation by the investigating officer/competent police officer as and when required ;
2. the applicant-accused shall not, directly or indirectly, made any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court to any police officer;
3. the accused-applicant shall not leave India without the previous permission of the Court, including the trial Court.
4. the accused- applicant shall attend the proceedings in accordance with the conditions of the bonds so executed under Chapter XXXIII of Cr.P.C.
5. the accused- applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected;
6. the accused-applicant shall not tamper with the evidence by any means;
7. the accused-applicant shall appear before the trial court on each date of hearing unless his personal appearance is exempted.

In case of violation of any of the conditions so imposed upon the accused-applicant, the investigating officer will be at liberty to file an appropriate application seeking cancellation of the bail granted to the applicant through the present order. Further, in case of breach of any of the conditions so imposed through the present order by the accused-applicant, the trial court will be at liberty to cancel the bail order of the accused. allowed.

Intimation be sent to SHO of concerned police station. Police record be returned forthwith, while file be sent back to the concerned court for the purpose of consignment.

Pronounced:

04.07.2023

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Prashant Verma

Additional District & Sessions Judge

Tarn Taran(UID No. PB0236)

Bail Application No 1784-2023
Date of Order : 04.07.2023

Present : Sh.J.S Kot Advocate for the accused-applicant.
Shri Ravinder Singh Additional Public Prosecutor for
the State.
ASI Karam Singh no. 631/Tarn Taran along with police record.

Police record has been produced. Arguments heard. Through separate
order of the even date, the application is allowed. Papers be consigned to the
record.

Pronounced:
04.07.2023

Typed by Kusum-III

Prashant Verma
Additional District & Sessions Judge
Tarn Taran(UID No. PB0236)