

(2022) 03 SHI CK 0034

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 429, 430, 486, 495, 496, 507, 509 Of 2022

Sunil Sharma And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Himachal Pradesh Excise Act, 2011 — Section 39(1)(a)

Indian Penal Code, 1860 — Section 120B, 467, 468, 471

Himachal Pradesh Prevention Of Specific Corrupt Practices Act, 1983 — Section 23

Citation : (2022) 03 SHI CK 0034

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Vinod Thakur, Ashok Sharma, P. K. Bhatti, Devender K. Sharma, Vikram Thakur, Puneet Rajta

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. All these petitions are being decided by a common order as common question of facts and law are involved.

2. Petitioner Neeraj Thakur (in Cr.MP(M) No.509 of 2022) was having L-14 licence for sale of country spirit at various units in District Hamirpur, for the year 2021-22. Petitioners Harish alias Rishu (in Cr.MP(M) No.507 of 2022), Ashish Soni (in Cr.MP(M) No.430 of 2022), Kartar Singh (in Cr.MP(M) No.495 of 2022), Kuldeep Singh (in Cr.MP(M) No.486 of 2022) and Rajeev Kumar (in Cr.MP(M) No.496 of 2022) were the employees of petitioner Neeraj Thakur, working for him as Salesmen at different retail vends. Petitioner Ashish Soni also worked as driver for petitioner Neeraj Thakur in addition to being his salesman. Petitioner Sunil Sharma (in Cr.MP(M) No.429 of 2022) was running an "AHATA" (Bar attached with retail liquor sales vend) at place Sulagwan, Tehsil Bhoranj, District Hamirpur, H.P.

3. An FIR No. 10/22, dated 24.01.2022 was registered at Police Station Bhoranj, District Hamirpur, H.P., under Sections 39(1)(a) of the H.P. Excise Act, 420, 467, 468, 471, 120-B, IPC and 23 of H.P. Prevention of Corrupt Practice Act, 1983. All the petitioners, in these petitions have been arrayed as accused in the above noted case and presently are in judicial custody.

4. The case as set up by the respondent is that on 23. 01.2022, the police officials of Police Station, Bhoranj, received a secret information that petitioner Harish alias Rishu, working as Salesman at liquor vend Bassi, had concealed boxes of country liquor "SANTRA VRV FOOLS" below road near village Plassi, which could be of spurious nature. "RUKKA" was sent to the police station for registration of FIR and police party immediately left for the spot. On identification of petitioner Harish alias Rishu, 22 boxes of country liquor ""SANTRA" brand with "VRV FOOLS" printed on each bottle were recovered and seized from underneath a small bridge. During investigation, petitioner Harish alias Rishu disclosed that he was working as Sales man in the liquor vend at Bassi, which belonged to petitioner Neeraj Thakur and said Neeraj Thakur was brother-in-law of the person, accused in a case registered at Police Station Sundernagar, in respect of deaths of persons due to consumption of spurious liquor. According to petitioner Harish alias Rishu, on 18th January, 2022 at about 9.30 A.M., when he was at the liquor vend, petitioner Ashish Soni working as Salesman at liquor vend Mundkhar and also working as driver, unloaded 20 boxes of liquor "SANTRA VRV FOOLS", at his liquor vend without pass and such consignment was brought in vehicle No. HP-68-3282 belonging to petitioner Neeraj Thakur. He further disclosed that on 19.01.2022 Contractor Neeraj Thakur informed him telephonically that since some persons had died at Sundernagar after consuming liquor "SANTRA VRV FOOLS", so the liquor of said brand should be concealed. He loaded 12 unsold boxes of liquor "SANTRA VRV FOOLS" in his vehicle No. HP-22B-6271 and went to petitioner Kartar Singh alias Karan, working as a Salesman at liquor vend Chahab, loaded 10 more boxes of the same brand of liquor and they both concealed it at the place from where it was recovered by the police.

5. During the investigation, police is stated to have further discovered that petitioner Ashish Soni was working as Salesman-cum-driver with petitioner Neeraj Thakur for the last about 4 years. On 17.01.2022 one Karamdeen working as Manager of Petitioner Neeraj Thakur called Ashish Soni with vehicle No. HP-21B-6083 at Vohani office. Karamdeen and Bashir loaded 138 boxes of "SANTRA VRV FOOLS" liquor without any pass/permit and directed Ashish Soni to deliver different quantities at different liquor vendes of petitioner Neeraj Thakur. In this manner, police during investigation has come across facts whereby petitioners Harish alias Rishu, Ashish Soni, Kuldeep Singh, Kartar Singh and Rajeev Kumar were found indulging in sale of liquor under the forged name "SANTRA VRV FOOLS" with impunity. They were found to have either concealed or destroyed a huge quantity of aforesaid liquor on the asking of petitioner Neeraj Thakur and this was done immediately after the incident of death of

persons at Sundernagar, after consuming liquor under brand named "SANTRA VRV FOOLS". According to respondents it has also been discovered during investigation that though the outside box containing liquor bottles was imprinted with Mark "VRV FOODS" but the bottles found therein were marked as "SANTRA VRV FOOLS".

6. Petitioner Sunil Sharma was stated to be running an "AHATA" (Bar attached with retail liquor sales vend), at place Sulagwan, Tehsil Bhoranj, District Hamirpur, H.P. and is also stated to have criminally conspired with other petitioners with a motive to sell the spurious liquor without licence.

7. The investigation is stated to be continuing. The samples of liquor "SANTRA VRV FOOLS" are stated to have been sent for chemical analysis and the report is awaited. Petitioner Neeraj Thakur is stated to have purchased a huge quantity of liquor "SANTRA VRV FOOLS" without any permit or pass from his brother-in-law, who is stated to be the kingpin in the trade of spurious liquor and booked for offences under Section 304, 308, 420, 120B, IPC at Police Station Sundernagar vide FIR No. 15/2022, dated 19.01.2022.

8. Petitioners have sought their bail in the above noted case on the ground that they are innocent. Petitioners, who are the employees of petitioner Neeraj Thakur, have pleaded their innocence by alleging that they were not aware about the real transaction and being employees, they simply obeyed their master. On the other hand, it has been argued on behalf of petitioner Neeraj Thakur that he was unaware about sale of any spurious liquor from his vends as he was totally dependent on his employees for the sale and he cannot be made liable for their acts. According to the petitioners, the investigation has been completed and they are in judicial custody. Nothing is required to be recovered from them. They all are permanent residents of State of Himachal Pradesh and there is no likelihood of their absconding from the course of justice.

9. I have heard Mr. Vikram Thakur, Mr. Puneet Rajta, Mr. Devinder K. Sharma & Mr. Vinod Thakur, learned counsel appearing for the respective petitioners and learned Advocate General for the State and have also gone through the records.

10. Allegations against the petitioners are of serious nature. As per the case of police, some persons had died at Sundernagar after consuming liquor brand "SANTRA VRV FOOLS". At Sundernagar, the brother-in-law of petitioner Neeraj Thakur is alleged to be the person running an illicit trade of liquor. Petitioner Neeraj Thakur is facing the allegations of his having procured huge quantity of spurious liquor from his brother-in-law for being sold at his liquor vends in District Hamirpur. Merely because fortune has favoured the consumers of such spurious liquor being sold from the vends of petitioner Neeraj Thakur, the offences against him as well as his employees and accomplices, who are petitioners before this Court, are not lessened.

11. The investigation is still going on with respect to material aspects of the matter. Persons indulging in such a perilous trade, without caring at all for the

health and lives of others that too with the sole purpose to earn money, do not deserve any leniency. Additionally, they can potentially adversely affect or tamper with the prosecution evidence collected so far or likely to be collected during the investigation. The Witnesses of the case will always be at the risk of being subjugated by the petitioners, at least during the continuance of the investigation. The report of the chemical analyst on samples of spurious liquor, allegedly sold by the petitioners, is still awaited. The Investigation as noticed from the status report filed by the respondent is at initial stage.

12. Mr. Vikram Thakur, learned counsel for petitioner Neeraj Thakur has placed reliance on the decisions of the Hon'ble Supreme Court in case titled as Aghnoo Nagesia vs. State of Bihar, AIR 1966 SC 119 and in case titled as Indra Dalal vs. State of Haryana, (2015)11 SCC 31, to buttress his argument that there is no legal evidence against his client save and except the confessional statements of co-accused. The argument so raised is liable to be rejected for the reason that the investigation is still continuing and it cannot be said that petitioner Neeraj Thakur has been implicated only on the basis of confessional statement of co-accused as alleged.

13. Keeping the view the gravity and seriousness of the allegations against the petitioners, this Court is of considered view that the release of petitioners on bail at this stage of the investigation will be detrimental to the progress thereof and the same will also send a wrong message amongst masses that law breakers can get scot-free easily.

14. In the light of the above discussions, the petitioners are not entitled to bail at this stage. Consequently, Cr.MP(M) No.429 of 2022, Cr.MP(M) No. 430 of 2022, Cr.MP(M) No.486 of 2022, Cr.MP(M) No. 495 of 2022, Cr.MP(M) No. 496 of 2022, Cr.MP(M) No. 507 of 2022 and Cr.MP(M) No. 509 of 2022 are dismissed.

15. However, it is made clear that the observations made hereinabove shall have no bearings on the merit of the case and shall be construed for the disposal of the present petitions only.