

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11032-2015 (O&M)
Date of Decision: 14.10.2015

Davinder Kant Sharma

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Mr. Dharmender Bhan, Advocate for the petitioner

Ms. Reeta Kohli, Addl. AG Punjab with
Mr. Vaibhav Sharma, DAG Punjab

Surya Kant, J.

(1) The petitioner has moved this second petition seeking his enlargement on bail in FIR No.69 dated 16.04.2013 registered U/S 22/25-A/27A/29/61/85 of NDPS Act, 420,467,468,471 IPC at Police State Fatehgarh Sahib. Though the petitioner has prayed for statutory bail under Section 167(2) CrPC but during the course of hearing, the matter was argued on merits only.

(2) As per the allegations contained in the FIR, the police party led by Inspector Davinder Kumar was patrolling near T-point, Saddo Majra, District Fatehgarh Sahib. A Qualis vehicle of white colour bearing Regd. No.PB-05-K-7070 came from the side of Village Kotla Bhai, which was stopped at the barrier. It was being driven by a young man who disclosed his name as Davinder Singh @

Happy s/o Baljit Singh. Search was conducted and 8½ kg ephedrine was recovered from a polythene envelope lying in the trunk of the vehicle. Davinder Singh was arrested and during interrogation, some more incriminating material was recovered from him. It was revealed that Davinder Singh @ Happy was actually the driver of Jagdish Singh @ Bhola who is stated to be the kingpin of drug mafia. Jagdish Singh @ Bhola was also arrested and during his interrogation on 02.12.2013, Bhola is said to have disclosed names of various associates like Dev Raj @ Dev Behal r/o Delhi, Chuni Lal Gaba etc. It appears that Chuni Lal Gaba made a confessional statement on the active role of Manager of their factory – Suresh Kumar s/o Ram Lubhaya, who was arrested on 07.12.2013. He was interrogated on the same day and is said to have named the petitioner. Similarly, Dev Raj @ Dev Behal who was arrested on 07.12.2013 too during interrogation allegedly named the petitioner-Davinder Kant Sharma – proprietor of Patli Dabur Healthcare Pharmaceutical Unit.

(3) The petitioner was declared proclaimed offender on 22.05.2014 as he was evading arrest but soon thereafter was arrested on 24.06.2014. It is alleged that he got recovered 8,15,900 tablets containing Pseudoephedrine and Triprolidine from his factory/licensed premises on 26.06.2014.

(4) The petitioner had earlier approached this Court for grant of regular bail in CRM-M-31348-2014 but the same was dismissed on 17.12.2014.

(5) It appears that after the Hon'ble Supreme Court passed the order dated 17.03.2015 in a bunch of cases arising out of the drug scam in Punjab relegating the aggrieved parties to approach the Division Bench of this Court before whom all such cases were directed to be listed, the petitioner has also filed this second bail application. The main plea taken by him is that since no charge-sheet was filed within 90 days of his arrest, he is entitled to be released on bail on the parity of Hrang Tin Khara to whom a learned Single Judge of this Court granted statutory bail in identical circumstances vide order dated 12.06.2014 passed in CRM-M-13049-2014. However, as mentioned in the opening paragraph of this order, the matter was primarily argued on merits.

(6) To appreciate the prosecution case against the petitioner, a brief reference to the allegations made against him in the charge-sheet filed under Section 173 CrPC may be made. It is alleged that after the petitioner's name surfaced in the statements made by Suresh Kumar (Manager) and Dev Raj @ Dev Behal "*the search of the factory of this accused namely M/s Patli Dabur Health Care, Gagret was got conducted in the present of S.P (D) Patiala, Drug Inspector Shani Kaushal, Una Himanchal Pradesh, drug inspector Jaijaikar, Patiala and accused, in furtherance of search warrants issued by the Court of Sh. Charanjeet Singh Arora, CJM, Fatehgarh Sahib and recovery of 815900 intoxicating tablets under the brand name of COLDSET containing pseudoephedrine was effected and 3 stock registers, fake bill, income tax returns, drug*

licenses, copy of sale deed, stock register were also recovered and these registers were checked by drug inspector Sh. Sunny Kaushal and the same were found to be tampered. The forged bill no.202 dated 16.11.2013 which is in the name of TTDL Pharma, A12/15, Bhajan Pura, Delhi from Patli Dabur Health Care and bill No.208 dated 30.11.2013 which is in the name of SRB Health Car 60, Avas Vikas Colony, Roorkee, District Haridwar from Patli Dabur Health Care. Forms of Inspector reports, sale deed of factory, 4 drugs licenses, income tax returns, three sets of bills of years 2013 – 2014 were recovered and all these were taken into police possession vide seizure memo and the swift desire car bearing No.PB 07A J 0200 along with its registration certificate was also taken into police possession vide seizure memo”.

(7) Learned counsel, in the above-stated context, *inter alia*, contended that the entire case is false and fabricated hence the petitioner deserves to be released on bail on following grounds:-

- (i) The tablets COLDSET recovered from the factory premises of the petitioner is not an illicit or illegal product. The Drug Licensing Authority, Solan vide licence dated 05.01.2011 (P3 colly) has expressly permitted the petitioner's unit (Patli Dabur Health Care) to manufacture tablet COLDSET with the following composition:-

- (a) triprolidine hydrochloride - 2.5 mg
- (b) pseudoephedrine hydrochloride - 60mg
- (c) approved colour used

The aforesaid permit also authorizes the petitioner's unit to market the said product;

- (ii) The pharmaceutical unit of the petitioner has been granted licence in Form-A by the Narcotics Control Bureau on 19.11.2013 (P3 colly) "to engage in activities in respect of controlled substance in Schedule A to the Narcotics Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013" and these controlled substances include (A) ephedrine and its salts; (B) pseudoephedrine and its salts. The nature of activities permitted under the licence is (a) purchase, (b) possession, (c) storage and (d) consumption;
- (iii) The sale invoices, bills and other records maintained by the petitioner's unit are absolutely genuine;
- (iv) The petitioner has been implicated on the basis of confessional statements which are inadmissible;
- (v) There is not an iota of evidence to attract any provision of NDPS Act against the petitioner;
- (vi) The petitioner is incarcerated for more than a year and three months.

(8) Contrarily, learned State counsel vehemently opposed the petitioner's prayer and contended that he claims to have supplied COLDSET to SRB Health Care of Roorkee District Haridwar (UP) but on investigation, it has been found that the said 'legal entity' was fake and was got registered at residential address

where no such factory was found in existence. The owner of the house denied the existence of any such factory or the rent agreement executed with him. It is claimed that fake entity was the petitioner's creation as a device to justify the illicit sale of 'controlled substances' to drug mafia. Learned State counsel relied upon a written note given by the proprietor of M/s T.T.D.L. PHARMA of Bhajan Pura, Delhi to the effect that the invoice No.0202 dated 16.11.2013 of Patli Dabur Health Care sent at the address of his firm is totally fake and forged. To the same effect, is the statement of one Parveen Kumar s/o Bhana Ram r/o Singhpura, Tehsil Safidon, District Jind. On this premise, it was vehemently contended that the petitioner has misused the licence granted for dealing with controlled substances and is thus guilty of an offence under Section 9-A of the NDPS Act.

(9) Having given our thoughtful consideration to the rival submissions for the limited purpose of grant of bail, we have no reason to doubt that out of the three accusations attributed to the petitioner, at least two are legally unsustainable and such accusations cannot invite the rigors of Section 37(1)(b)(ii) of the NDPS Act. The first allegation is of recovery of tablets COLDSET from the pharmaceutical unit. In view of the explicit permission granted by the Competent Authority to manufacture those tablets, it is baseless to say that manufacturing of such product is an offence. As per the FSL report dated 28.10.2014, the parcel containing 200 tablets of COLDSET has been tested with the

contents of a pseudoephedrine with the average of 55.8mg/tablet or that triprolidine hydrochlorate was “found present in the tablets”, is also inconsequential as these are permitted components. Moreover, in view of the report of the Government Analyst of Central Lab at Kandaghat (HP) dated 19.09.2014 according to which, “the sample referred to above is of standard quality as defined in Drugs and Cosmetic Act, 1940...”, there is hardly any merit in the accusation.

(10) As regard to the third allegation, namely, preparation of fake bills or showing supply to non-existent firms, no meaningful investigation has been done except to the statements of some persons who *prima facie*, were afraid of their own complicity.

(11) When a commercial establishment or industrial unit is established, there has to be complete documentation in the records of the concerned Govt. Department. The parameters for setting up an industrial unit as compared to opening of a medical shop would be different. There can be *per se* no illegality if a medical shop is opened in a residential area but it may not be so good for establishing an industrial unit.

(12) If the petitioner manoeuvred and forged the records showing fake supplies to non-existent medical shops/firms, a *prima facie* case under Section 9-A would be made out. But if such supplies were genuine irrespective of the area where such units are located, for which he has no concern, it is impossible to attract the rigors of Section 37(1)(b)(ii) of the NDPS Act.

(13) Knowing the gravity of the offences alleged to have been committed by the drug-mafia within and outside the State of Punjab in an organized manner, it appears appropriate to direct the Supervisory-cum-Special Investigating Team constituted by this Court vide order dated 07.10.2015 passed in **CWP No.88 of 2014 (Jagjit Singh Chahal vs. State of Punjab & Ors.)** to contact their counterparts and other statutory authorities in the States of Himachal Pradesh and Uttrakhand and obtain a fresh fact-finding report within two weeks from the date of receipt of a certified copy of this order. If need be, a team of officers be sent to both the States and such report must be based upon official records and not the so-called oral versions as relied upon earlier.

(14) On receipt of the fact finding report, we direct the Special Court to consider its contents only for the limited purpose to decide the bail of petitioner afresh. If two views are possible, it is directed that the petitioner shall be released on bail. The Special Court shall pass appropriate order before 30.11.2015.

(Surya Kant)
Judge

14.10.2015
vishal shonkar

(P.B. Bajanthri)
Judge

*