

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-11067-2015 (O&M)
Date of Decision: 14.10.2015

Cer Boih @ Cherry

... 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 seeks her release on bail in the case FIR No.228 dated 28.06.2014 registered U/S 21/22/25/25-A/27/29 of NDPS Act, at Police State Tripri, District Patiala.

(2) As per the allegations contained in the FIR, a secret information was received that R.Shiva Kumar s/o M. Raju r/o Puzhal, Chennai, V. Venkatesh r/o Chennai, S.Mani @ Rajesh r/o Chennai, Rajesh Kumar r/o Delhi, Suresh Kumar r/o Chennai, Ashwani Kumar Chhabra r/o Delhi, Rehman r/o Malaysia and Cherry r/o Delhi, have formed a gang who smuggle different intoxicating materials like chemicals, medicines and synthetic drugs and transport it in luxury cars for supply in Rajpura and Patiala (Punjab). The gang was hands in glove with those who are

in the business of medicines and they illegally purchase intoxicating substances from pharmaceutical units of Punjab, HP, Delhi and other States in connivance with factory owners and then prepare synthetic drugs to be sold within and outside the country. The informer further disclosed that the gang had supplied various consignments of intoxicating material in the area of Tripri town, Patiala and nearby places in Punjab. The information was treated reliable and FIR was registered against the above-named suspects.

(3) The police challan filed under Section 173 CrPC further reveals that on 29.06.2014 and on 30.06.2014, vehicles were checked at Bhadson Toll Barrier. Another secret information was received on 30.06.2014 and on that basis a special barricade was put at Railway under-bridge in village Daharia and a car bearing regd.No.DL-7C-3264 colour silver coming from Ambala side was stopped and 5 young persons traveling by that vehicle, namely, R.Shiva, who was driving the car along with V.Venkatesh, M.Prabhu @ Suresh, R.V.Shanmugam and S.Mani – mostly residents of Chennai were apprehended along with huge quantity of contraband including 25kg pseudoephedrine were recovered. Cash amount of ₹1.60 crore was also recovered from them.

(4) The petitioner was not apprehended on 30.06.2014 along with above named persons but when they were taken to Delhi for the purpose of investigation, another police team along

with arrest warrants of the petitioner who was allegedly waiting for customers in Vidya Nagar in her Maruti Suzuki car No.DL-5CD-6804, also reached Delhi. The petitioner was arrested and on the search of her vehicle and residence, 600gm intoxicant powder, 4,98,000 tablets under the brandname of OMKOOL i.e. a preparation of pseudoephedrine, etc. etc. were recovered.

(5) From the dashboard of the car a driving licence issued in the name of Lalhriatpuii d/o Lalkulha r/o Nghathal, Manipur and a PAN card No.AISPL248R, both bearing the petitioner's photograph, were allegedly recovered. Another driving licence No.OLA:MZO132451214 issued in the name of the petitioner was also recovered. Similarly, voter ID card of the petitioner besides gold jewellery 102gm and 790 milligrams was also found. The petitioner could not produce the documents of ownership of the car she was driving or of the jewellery.

(6) The petitioner alleges her false implication under the NDPS Act. The tablets recovered from her are stated to be cough and cold medicines, and are preparation of pseudoephedrine so there is no control or restriction on sale, trade, possession or consumption of these medicines. It is further claimed that the tablet OMKOOL is an authorized product of pseudoephedrine, hydrochloride and ceterizine hydrochloride. It does not violate any provision of NDPS Act or the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013 and only its import and export is prohibited.

(7) The petitioner has also placed on record her complaint dated 28.04.2015 sent to SHO PS Gazhipur, New Delhi alleging sexual violence committed on her by the Punjab Police team led by Inspectors Davinder Kumar Attri and Shaminder Singh in a room at Picasso Hotel, Delhi where she was kept in illegal detention from 28.06.2014 to 30.06.2014. She has filed a criminal complaint under Section 200 CrPC on these allegations before the Judicial Magistrate in Delhi where her statement and of her witnesses have since been recorded.

(8) The petitioner thus seeks her release on bail on the grounds that :-

- (i) No *prima facie* case under the NDPS case is made out against her;
- (ii) The tablets allegedly recovered from her are cough and cold medicines and can be lawfully possessed;
- (iii) The non-production of ownership documents of the car or jewellery or possession of two driving licences etc. is not an offence under the NDPS Act;
- (iv) The petitioner is a widow who has two school going children and there is no one to look after them;
- (v) The petitioner is the victim of sexual abuse at the hands of Punjab police;
- (vi) The investigation is complete and charge-sheet has already been filed. Since 24 prosecution witnesses are cited, the trial is likely to take considerable long time.

(9) Learned State counsel vehemently opposed the petitioner's prayer. She argued that the petitioner is a member of 'Chennai Cartel' who is actively involved in illicit drug-trafficking within and outside the country. The petitioner who is stated to be a Myanmar national, and one Rehman of Malaysia are the international faces of the gang. Since the petitioner revealed that she was a Burmese national, the Ministry of External Affairs was informed about her arrest (R6). Some of the gang members including their kingpin Ashwani Chabbra who runs Shifa Biotech Delhi are yet to be arrested and have been declared proclaimed offenders. The tablets recovered from the petitioner were supplied by the manufacturer company 'Indkus Biotech India' near Kala Amb, District Sirmaur (HP) to M/s Shifa Biotech vide retail invoice dated 07.07.2009 (R8) for a value of ₹6,75,746/-. Since the tablets are manufactured with controlled substance, the petitioner cannot legally retain such huge quantity and their possession amounts to an offence under Section 25-A of the NDPS Act for which the petitioner has been charge-sheeted by the Special Court.

(10) Learned State counsel urged that the petitioner is a professional gang member and if released on bail, she would tamper with the evidence and there is every possibility of her absconding from trial being a foreign national.

(11) The State counsel pointed out that the son of her co-accused (R.V.Shanmugam), namely, S.Sivanesan aged about 22

years, resident of Tamil Nadu filed his affidavit in support of the regular bail application moved by the petitioner under Section 439 CrPC before the Special Judge, which shows the close relationship amongst the gang members. R.V. Shanmugam is stated to be a history sheeter against whom cases registered by the Directorate of Revenue Intelligence and NCB Chennai are pending.

(12) As regards the allegations of her sexual abuse, learned State counsel termed the same as an afterthought story cooked up to browbeat the investigating team. It was pointed out that these allegations first time surfaced in March and April, 2015 though the so-called occurrence took place in June, 2014. Learned State counsel referred to various documents to suggest as to how the petitioner got issued her passport, driving licenses or PAN card in different names so as to hide her identity.

(13) We have heard learned counsel for the parties and given a cursory look to the documents referred to by the parties with reference to the broad parameters discussed in the lead case of **Ravi @ Anil Chauhan vs. State of Punjab (CRM-M-11031 of 2015)** decided on 07.10.2015, for the purpose of granting bail in NDPS cases. We are satisfied that the petitioner does not deserve the concession of bail. The petitioner appears to be actively associated with R.V. Shanmugam and Ashwani Chhabbra who are the men of doubtful character. Different IDs used by the petitioner or the manner in which she leveled unsubstantiated allegations, coupled with the fact that the nature of recoveries

alleged to have been effected from her would attract the provisions of NDPS Act as well as its Section 37(1)(b)(ii), we are not inclined to release the petitioner on bail at this stage.

(14) Dismissed.

(15) The observations made hereinabove shall have no bearing on the merits of the case.

(Surya Kant)
Judge

14.10.2015
vishal shonkar

(P.B. Bajanthri)
Judge

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