

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41021-2014 (O&M)
Date of Decision: 07.10.2015

Chuni Lal

... 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. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate for the petitioners

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

Surya Kant, J.

(1) The petitioner seeks regular bail in the case FIR No.92 dated 03.06.2014 u/S 21/22/25/25-A/27/29/61/85 of NDPS Act and 25/54/59 of Arms Act registered at Police Station Passiana, District Patiala.

(2) As per the allegations contained in the FIR, the SHO of Police Station Paasiana, District Patiala along with a team of police officials was patrolling in Govt. vehicle and when they reached near the bus stop of village Rajgarh on Bhawanigarh Road, he received a secret information that Varinder Singh Sandhu r/o Abohar and Chandigarh, who runs a pharmaceutical unit at Baddi (HP) along with Sandeep Singh Sidhu @ Soni @ Doctor, Harinder Singh Mander @ Pappi, Bikramjit Singh @ Pappi and their more friends were in the business of

manufacturing Methamphetamine (ICE) and other psychotropic substances by using pseudoephedrine and ephedrine which they procure from the owners or managers of various pharmaceutical companies. They also used to smuggle these psychotropic substances illegally on various places within and outside the country to earn huge profits. They have been running their business activities of trading in ICE at Hotel Royal Castle at Bhawanigarh road, Patiala and if kept under surveillance, they could be caught with huge quantity of illegal drugs, weapons and ammunition. Many of these persons have acquired citizenship of countries like Canada, Australia, America and England and they can thus travel various countries very easily. The FIR was registered on the premise that the above received information was reliable.

(3) After the registration of FIR, Varinder Singh Sandhu, who was running a pharmaceutical industry 'Mafro Organic Ltd.' at village Tahliwali, District Una (HP), was arrested on 14.06.2014. Huge quantity of pseudoephedrine and Diphenoxilete powder is alleged to have been recovered from him and other accused.

(4) Varinder Singh Sandhu – one of the above-named accused allegedly disclosed the names of four other members of the 'gang', namely, (i) Gurjit Kumar Gabba @ Monu; (ii) Gurbans Kumar (brother of Gurjit Kumar Gabba); (iii) Chuni Lal Gabba (who is father of Gurjit Kumar and Gurbans Kumar) and (iv) Ramesh Kumar Gabba (brother of Chuni Lal Gabba). All of them are owners of one or the other pharmaceutical industry at Gagret in Himachal Pradesh. One Mexican

named as 'Chakki' used to reside in that factory and he is allegedly an expert to manufacture ICE.

(5) The petitioner has thus been implicated in the manner stated above along with his two sons and a brother.

(6) The petitioner was arrested on 19.06.2014 and is in custody from last about 1 year and 4 months.

(7) The petitioner's version is that he is one of the Director in Med Care Remedies P.Ltd. – a company registered in the State of Himachal Pradesh and it runs its pharmaceutical industry. The son of petitioner Gurjit Kumar Gabba is the working Director and is also the authorized signatory of the company for all purposes (P3). The affairs of the business are managed by Gurjit Kumar Gabba only.

(8) The petitioner is now 70 years old. In the application dated 20.06.2014 (P4) moved by the IO for one day's police remand of the petitioner, it is averred that "after his arrest, his medical condition deteriorated as he had undergone a surgery earlier. In order to save his life, he was admitted in DMC Ludhiana by his family members...". After the petitioner was discharged by the hospital, the police interrogated him and the very next day i.e. on 21.06.2014, the IO moved another application (P5) to keep the petitioner in judicial custody.

(9) The medical history appended by the petitioner (P6 & P7 colly) does reveal that he underwent heart surgery on 11.04.2012 in Dayanand Medical College and Hospital, Ludhiana (DMC) and still he is not maintaining good health.

(10) In this factual backdrop, the petitioner seeks his release on bail on the grounds, *inter alia*:-

- (i) He has not been named in the FIR;
- (ii) He has been implicated on the basis of confessional statement of a co-accused;
- (iii) No contraband or synthetic drug was recovered from the petitioner's possession;
- (iv) He has been implicated only because he happens to be one of the Director of the company which runs the pharmaceutical industry;
- (v) Section 37 of the NDPS Act is not attracted;
- (vi) Petitioner's co-accused Suresh Kumar has already been released on bail by this Court vide order dated 16.10.2014 (P8);
- (vii) The admitted precarious health condition of the petitioner coupled with his age, would also deserve sympathetic consideration;
- (viii) The petitioner has spent about 1 year 4 months in custody and the conclusion of trial will take time;
- (ix) The petitioner is not found involved in any other case under the NDPS Act or other penal laws;

(11) Learned State counsel opposed the petitioner's prayer as according to her, (i) the petitioner is equally liable as his son in view of the express provisions like Section 8A, 27B, 29 and 38 of the NDPS Act;

(ii) the confessional statement made by Inderjit Singh s/o Hakam Singh

(R2) who was working as a driver with the petitioner's family sufficiently narrates the manner in which illicit drug manufacturing and its trading was being done by the petitioner's associates; (iii) his own confessional statement clearly nails him as well as his son and their manager; (iv) in view of Section 53A, these confessional statements are relevant and admissible; (v) similarly, Section 54 of the NDPS Act puts the petitioner under a heavy onus to prove his innocence as there is a statutory presumption of his being guilty of the offence.

(12) Having heard learned counsel for the parties and on consideration of the material on record but without expressing any views on merit, we are satisfied that the petitioner deserves the concession of bail. We say so for the reasons that (i) there will indeed be a very heavy onus on the prosecution to establish the petitioner's complicity on the basis of disclosure statement alone; (ii) no synthetic drug or any contraband was recovered from petitioner's conscious possession to attract the rigors of Section 37(1)(b)(ii) of the NDPS Act; (iii) it does appear that *de facto* the pharmaceutical unit was being run, managed and controlled by the petitioner's son Gurjit Kumar Gabba though *de jure* he continued to be the director of the company. It is a matter of common knowledge that when children take over the business, the elders invariably withdraw themselves from day to day activities; (iv) the petitioner's deteriorating health condition itself is a valid ground to order his release on bail; (vi) this Court vide order dated

27.03.2015 directed Civil Surgeon, Patiala to constitute a medical board

and we are informed that as per that report, the petitioner's health condition is quite poor and he deserves to be released; (vii) the petitioner is in custody for more than a year and the trial is not likely to be concluded within a short predictable time.

(13) We thus allow this petition and direct the petitioner's release on bail on his furnishing bail bonds to the satisfaction of the CJM Patiala.

(Surya Kant)
Judge

0710.2015
vishal shonkar

(P.B. Bajanthri)
Judge