

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-14360-2016

Date of Decision: 30.09.2016

Paramjit Singh Chahal

...Petitioner

VERSUS

State of Punjab

....Respondent

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. Vikram Chaudhary, Senior Advocate with
Mr. Sartaj Singh Gill, Advocate for the petitioner.

Ms.Reeta Kohli, Addl. AG Punjab with
Mr.Hanspal Virk, AAG Punjab for the State.

SUDIP AHLUWALIA, J.

This is the second petition filed on behalf of the petitioner seeking bail in FIR No.56 Dated 15.5.2013 of Police Station Banur, District Patiala, under Sections 379, 411, 473, 468, 471, 212, 120-B IPC and Sections 21, 22, 25, 25-A, 27 and 29 of the Narcotic Drugs & Psychotropic Substances (NDPS) Act, 1985 and Sections 25 of the Arms Act, after his having surrendered and remanded to judicial custody on 14.11.2015. Before advertng to the factual matrix of the case, it would be appropriate to first take notice of the previous legal proceedings preferred at the instance of the petitioner in this regard. It is firstly noted that the petitioner was originally

granted bail by a Single Bench on 22.3.2014. But the State sought its cancellation. A Division Bench of this Court, in which, one of us (Surya Kant, J.) was a member, by its order dated 7.10.2015, cancelled the bail. The petitioner challenged such order of cancellation by way of SLP (Crl.) No.9391 of 2015. During pendency of the SLP, he surrendered before the Designated Court on 14.11.2015 and was remanded to judicial custody. The SLP was withdrawn two days later (on 16.11.2015) as the Supreme Court had granted him the liberty to seek his relief from the appropriate Forum. The Designated Court, however, rejected his petition for bail by its order dated 2.1.2016, after which, he approached this Court for the same relief. But the Division Bench rejected his prayer on 17.3.2016 by a detailed order (Annexure P5). He thereafter filed the present petition three months later on 20.6.2016.

2. Now to the factual matrix/substance of allegations contained in the FIR. It may be mentioned that in the previous order dated 17.3.2016, the Division Bench had taken note of the material facts and circumstances, which are now being re-visited in order to consider whether any new grounds justifying any deviation from the previous order, have arisen or not.

It was noted in the earlier order -

“2. As per the FIR version, the SHO Police Station Banur, District Patiala along with other police officials was on patrol duty and when they were at Banno Bhai Chowk, Banur, a secret information was received that Satinder Thama son of Ram Roshan Thama resident of # 1669, Sector 15, Panchkula, Baljinder Singh @ Sonu resident of Amritsar, who along with other members of the gang were involved in stealing vehicles which are used for supplying ICE, Pseudoephedrine and other intoxicating material with forged 'number plates', were travelling on that day in a Verna car affixing fake number plate HR-26AJ-

1019 from Amritsar to Delhi via Kharar and would be carrying the intoxicants. Based upon the secret information the FIR was registered under various provisions of IPC, NDPS and Arms Act.

3. The allegations against petitioner and his brother are that they have set up two pharmaceutical industries in the State of Himachal Pradesh at Baddi and Barotiwala, District Solan, namely (i) M/s Montek Biopharma and (ii) MBP Pharmaceutical P. Ltd. These industries were granted licences by the State Drug Controller, Himachal Pradesh and the Narcotic Control Bureau for manufacture, distribution, sale, purchase, possession, storage and consumption of 'controlled substances' mentioned in Schedule 'A' of the NDPS Act.

4. The petitioner and his brother are alleged to have misappropriated the two controlled substances of 'ephedrine' and 'pseudoephedrine' supplied to them at concessional rates, for the illicit manufacturing and illegal trade of narcotics/synthetic drugs. The invoices of so-called sale or supply of their manufactured drugs containing these controlled substances, were found either to be fake or the consignees were non-existent."

3. Taking into account this background of the matter and after hearing the contesting sides, the Division Bench in rejecting the prayer for bail, had observed, inter-alia -

"9. The petitioner has not made out any case to release him on bail as no new ground has been urged except that the petitioner's brother Jagjit Singh Chahal's bail has been upheld by this Court and petitioner case is on a better footing than his brother-Jagjit Singh Chahal. Except this contention, rest of the contentions are relating to the factual aspects like the petitioner has surrendered on 14.11.2015 and is lying incarcerated in judicial custody, challan was filed way back on 05.09.2014 and he has not misused or abused the process of bail earlier granted to him and his conduct has always been above board. It was also contended that he has now surrendered in compliance with

his undertaking given before the Supreme Court.

10. The offence alleged against the petitioner has a serious adverse impact on the fabric of the Society. The offence is of high magnitude indicting misuse of the controlled substances which were provided to the petitioners' pharmaceutical at a concessional rate. The petitioner is stated to be transacting with a drug lord Jagdish Singh @ Bhola.

11. Since the trial is still at an early stage and the allegations and grave in nature, it would not be expedient or appropriate to release the petitioner on bail at this stage.

Petition is dismissed.”

4. The petitioner thereafter filed this second bail petition, in which, he now claims his release in view of the emergence of certain new facts and circumstances, which, according to him, would entitle him to such release.

5. The sum and substance of these new facts and circumstances may be summarized to the effect that actually, the petitioner along with his brother Jagjit Singh Chahal, had been wrongly and motivatedly framed by the Punjab Police in the concerned FIR on trumped up allegations. On the other hand, his contention is that he is a fair and honest man engaged lawfully in the business of Pharmaceuticals and that there is absolutely no truth in the allegations that he or his business Unit “M/s MBP Pharmaceutical” had at any time diverted the controlled substances secured lawfully under an appropriate licence, or converted the same into the contraband drugs or illegally supplied the same anywhere as alleged. To substantiate this contention, a number of documents have been placed on record on his behalf. These include the licenses to manufacture for sale or distribution of various specified drugs issued by the competent authority being the State Drugs Controller (Licensing Authority-cum- Controlling

Authority), Baddi District of Himachal Pradesh. He has also placed on record the list of additional products permitted to be manufactured by him, under the nomenclature “Kil Cold 2 Tablets” authorized by the same authority. He has also placed the licence issued in this regard by the Zonal Director of Narcotics Control Bureau in relation to the controlled substances being “Ephedrine and its Salts” as well as “Pseudoephedrine and its Salts”. A copy of first application for Registration for Consumption of Controlled Substance in Schedule A to the aforesaid Zonal Director has also been placed on record in the form of Annexure D. Besides, he has also placed the copy of Register of Consumption of the concerned Controlled Substances for the period between January 2013 to January 2014 (Annexure E), apart from a copy of the Return submitted in this regard for the second quarter of 2013 to the same Authority (Annexure F). To support the contention that the petitioner or his Company never illegally diverted any product in the form of Contraband Drugs, the petitioner has also placed various documents to show his business dealings in the form of Agreements/Orders for the medicines produced in his industrial concern and their consignment/delivery to the interested parties outside the State. He has laid special emphasis on his Company's business transaction with another Maharashtra based Company being “M/s Smartminds Healthcare Private Limited” to show that his Company received the valid orders for supply of the medicines produced by it, after a legitimate initial business Agreement (Annexure I), its consignment by Transport through Transporter “Khushdil Roadways CHD (Regd.)” and even deduction of VAT on the concerned consignment. He has also sought to emphasize that even the consideration price for the medicines supplied by him was credited to his Company's Bank

Account. Furthermore, the Certificate of Registration and licence held by the consignee “Smartminds Healthcare Private Limited” have been placed on record. In this manner, he has sought to emphasize that his Company has all along been engaged in a legitimate Pharmaceuticals business and there is no truth in the allegations made against him by the Punjab Police in the FIR.

6. From their side, however, the Respondents/Punjab Police have rebutted all the allegations raised on behalf of the petitioner. According to them, after having been released on bail, the petitioner's brother Jagjit Singh Chahal had been influencing the concerned authorities including the Police in the State of Himachal Pradesh with a view to counter the FIR allegations. In fine, the contention raised on behalf of the Punjab Police is that the report regarding valid consignment etc. of medicines allegedly supplied by the petitioner's Company outside the State had been perfunctorily submitted by a low level Himachal Pradesh Police Officer in the rank of Head Constable, without verifying the facts in depth. On the other hand, according to the respondents, the documents regarding the business transactions relied upon by the petitioner are false and fabricated. To support this contention from their side, the respondents have placed on record various documents, like a Letter from the Assistant Commissioner, Food & Drug Administration, Jalgaon (Maharashtra) dated 10.8.2016 (Annexure A1), in which, it has been mentioned as under :-

“Further it is submitted that in above investigations, it is found that any formulations of Pseudoephedrine and Ephedrine or their salts by above said invoices or any other invoices issued by M/s MBP Pharmaceuticals Pvt. Ltd., 139/2, Village Johdapur, Barotiwala-Baddi, Distt. Solan (H.P.) and M/s. Montek Biopharma, 45, HIMUDA Ind. Area, Bhatolikalan, Baddi, Distt. Solan (H.P.) neither ordered, purchased nor

received by the firms, M/s. Paris Medicament, Jalgaon and M/s. Smartminds Healthcare Pvt. Ltd., Jamner, Jalgaon.”

7. Again, the respondents have also placed on record another letter issued by the Director of Drugs Control, Tamil Nadu, which is a report in relation to the alleged supply of drugs by the petitioner's Company (Annexure A2) and it has been mentioned therein that the various invoices issued on behalf of the petitioner's Company as mentioned in the list appended to the letter/report, were found to be “not genuine NG”.

8. The petitioner's side has, however, vehemently contended that all these reports/letters have been procured by the Punjab Police under undue influence upon the concerned authorities outside the State as well as the alleged proprietor of the Firm “Paris Medicament” based in District Jalgaon, Maharashtra, who in an affidavit dated 8.8.2016, had affirmed that his firm had never purchased any pharmaceutical products from the petitioner's Company, nor ever placed any order for any product containing Pseudoephedrine and that the firm had also not ordered or purchased the High Cold Tablets from the petitioner's Company as mentioned in its relevant invoice of the year 2013.

9. In this view of the matter, the petitioner has in a way sought to hit at the very root of the allegations levelled in the FIR drawn up by the Police, which have been denied by the respondent/Police authorities in an equally emphatic manner. We can only observe that the truth of the allegations and counter allegations in this regard raised by both the contesting sides is essentially a matter of actual trial, and for the purpose of deciding the bail petition, we cannot venture into conducting a mini trial or fishing enquiry to determine, whose documents and reports regarding the business transaction of the petitioner's Company are genuine or false. That

finding can only be arrived at appropriately when all the facts in this regard are placed for scrutiny and determination before the Designated Court during the regular trial. Suffice it to say, at this juncture, we are unable to hold that there is any such material change in the circumstances after rejection of the petitioner's first bail petition on 17.3.2016, as might warrant his release at this stage. The bail petition is, therefore, rejected.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

September 30, 2016
AS

Whether speaking/reasoned : ***Yes/No***
Whether Reportable : ***Yes/No***