

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-2613-2016 (O&M)

Date of Decision: 16.03.2016

Davinder Kant Sharma

... Petitioner

VS.

State of Punjab

... Respondent

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

Present: Mr. JS Bedi, Senior Advocate with
Mr. Lovekirat S. Chahal, Advocate for the petitioner

Ms. Reeta Kohli, Addl. AG Punjab with
Mr. Hanspal S Virk, AAG Punjab

SURYA KANT, J. (Oral)

(1) This is the third petition moved by the petitioner for his enlargement on bail in the case 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.

(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. Chuni Lal Gaba appears to have made a confessional statement regarding the active role of the 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 also during his interrogation named the petitioner-Davinder Kant Sharma – who is the proprietor of ‘Patli Dabur Healthcare Pharmaceutical Unit’ at Village Oail, District Una (HP).

(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 first bail application moved by the petitioner was turned on 17.12.2014. His second petition i.e. CRM-M-11032-2015 was disposed of by a detailed order dated 14.10.2015 in which this Court concluded as follows:-

“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.

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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.

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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.”

(5) In purported compliance to the observations reproduced above, the Special Court considered the petitioner's bail application but has turned down the same broadly referring to two instances of supply of COLDSET tablets manufactured in petitioner's pharmaceutical industry to (i) SRB Health Care at Roorkee; and (ii) TDDL Pharma Wazirabad, Delhi, the records of which were found to be fake and forged.

(6) The Special Investigation Team constituted by this Court has also examined the petitioner's case on the issue as to whether he deserves to be prosecuted as per the subject FIR and/or the matter requires re-consideration. The SIT has *prima facie* found that there are manipulations in the record maintained

by the petitioner regarding receipt of “controlled substances” under the licence granted by the Narcotic Control Bureau and thus a case under the NDPS Act is made out against him.

(7) Be that as it may, the observations made by the SIT would be relevant for the continuation of ongoing trial where the onus is on the prosecution to establish the accusations beyond any doubt. As regards the issue of petitioner’s enlargement on bail, there is no quarrel that hundreds of other transactions for the supply of COLDSET tablets as well as other 83 licensed medicines/drugs manufactured by the petitioner’s pharmaceutical industry are statedly genuine though the two transactions regarding supply of COLDSET tablets to the fake firms at Roorkee and Delhi are reiterated.

(8) There is no other case registered against the petitioner under the NDPS Act.

(9) So far as the supply of COLDSET tablets is concerned, it is undeniable that the petitioner has got a valid licence from the prescribed authority to manufacture such medicine.

(10) The petitioner is in custody since June, 2014. There are more than 70 witnesses which the prosecution intends to examine in the pending trial. As no private witness is cited by the prosecution, there is no likelihood of tampering with the evidence.

(11) Taking into consideration the totality of the circumstances and the fact that petitioner’s co-accused Devraj @

Dev Behal has been granted bail in CRM-M-10657-2015, we are of the considered view that the petitioner too deserves to be released on bail at this stage. Accordingly, we allow this petition and direct that the petitioner be released on bail subject to his furnishing bail bonds to the satisfaction of CJM Fatehgarh Sahib.

(12) This order, however, shall not be a valid ground for restoration/re-validation of the licence of the petitioner's pharmaceutical unit, if the same is lying suspended by the competent authority.

(Surya Kant)
Judge

16.03.2016
vishal shonkar

(P.B. Bajanthri)
Judge