

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24556-2017 (O&M)

Date of Decision: 24.07.2017

Paramjit Singh Chahal

... Petitioner

VS.

State of Punjab

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Dharmender Bhan, Advocate for the petitioner

Ms. Manjari Nehru Kaul, Addl. AG Punjab

SURYA KANT, J. (Oral)

(1) This is the fourth petition filed by the petitioner under Section 439 CrPC seeking his release on regular bail in FIR No.56 dated 15.05.2013 registered at Police Station Banur, District Patiala u/s 379, 411, 473, 468, 471, 212, 120-B IPC; u/s 21/22/25/25-A/27/29 of NDPS Act and u/s 25 of the Arms Act. His first, second and third bail applications were rejected vide self-speaking orders dated 17.03.2016, 30.09.2016 and 17.04.2017, respectively.

(2) The petitioner and his brother (Jagjit Singh Chahal) are that they have set up two pharmaceutical industries in the State of Himachal Pradesh at Baddi and Barotiwala, District Solan, HP, namely, (i) M/s Montek Bio Pharma; and (ii) M/s MBP Pharmaceuticals Pvt.Ltd. These industries have been 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' under the NDPS Act. The allegations are that the petitioner and his brother have misappropriated the controlled substances, namely, 'ephedrine' and 'pseudoephedrine' supplied to them at concessional rate and have misutilised it

invoices of sale and supply of their manufactured drugs containing such controlled substances were found either to be fake or the consignees were non-existent.

(3) Their factory premises along with residential houses were raided and huge quantity of unauthorized controlled substances were allegedly recovered.

(4) Earlier, the petitioner's brother Jagjit Singh Chahal approached this Court vide CWP No.88 of 2014 seeking a direction that the investigation of the subject FIR be entrusted to an independent agency preferably the CBI as *prima facie* no case whatsoever was made out against them. The core contention raised on his behalf was that the diversion of controlled substances from their industrial units, as was being alleged, did not amount to an offence under the NDPS Act. This Court vide detailed order dated 07.10.2015 turned down the contention observing as follows:-

“(156) Clause 8 of the Order provides that no person shall sell a ‘controlled substance’ in Schedule A to a buyer who does not possess valid registration number issued under sub-clause (i) of Clause 4. Schedule ‘A’ of 2013 Order enlists the following ‘controlled substances’:-

1. Acetic anhydride

2. N-Acetylanthranilic acid

3. Ephedrine and its salts

4. Pseudoephedrine and its salts.

(157) It thus emerges that Ephedrine and its salts and Pseudoephedrine and its salts are included in Schedule ‘A’ and their manufacturing, distribution, sale, purchase,

possession, storage or consumption including transportation has to be carried out strictly as per the provisions contained in the 2013 Order. If there is any contravention of such provisions, Section 9-A of the Act is directly attracted and the act would be liable to be punished with rigorous imprisonment for a term which may extend upto 10 years with fine of ₹ 1 lac under Section 25-A of the Act.

(158) To say it differently, the misuse of a 'controlled substance' whether Ephedrine or Pseudoephedrine or their salts, is not a mere violation of the conditions of licence for which action would be taken by the State Drug Controller or the Narcotics Control Bureau. Such violation also constitutes an independent offence under the NDPS Act and is severely punishable.

(159) The plea taken by the manufacturers/proprietors of pharmaceutical units that the alleged violation of the terms and conditions of their licences would not clothe the police to slap a case under the NDPS Act thus carries no weight and deserves to be rejected."

(5) It may be mentioned here that while the brother of the petitioner was apprehended by the police, the petitioner successfully evaded his arrest and was declared a proclaimed offender. A learned Single Judge of this Court vide order dated 22.03.2014 nonetheless released the petitioner's brother on regular bail and also accepted the surrender made by petitioner in Court and granted him pre-arrest bail. The State of Punjab challenged the grant of bail to the

petitioner and his brother before the Hon'ble Supreme Court but the said petition was eventually disposed of with liberty to approach this Court for cancellation of bail. Such a petition was thereafter filed by the State of Punjab which was accepted by Division Bench to which one of us (Surya Kant, J) was a member on 07.10.2015 and the orders dated 06.03.2014 and 22.03.2014 granting interim and final bail to the petitioner were cancelled.

(6) The petitioner unsuccessfully challenged the said order dated 07.10.2015 before the Hon'ble Supreme Court in SLP No.9391 of 2015 and left with no option, surrendered before the police authorities on 14.11.2015. He is thus in custody from last about 1 ½ years.

(7) As noticed at the outset, the petitioner after some time applied for his regular bail but his first petition was dismissed on 17.03.2016. The second and third petitions were also later on declined.

(8) In this fourth petition, petitioner contends, *inter alia*, that (i) as per the allegations made against him, an offence under Section 26 of the NDPS Act alone can be made out for which the maximum sentence is three years out of which the petitioner has already undergone 1½ years; (ii) petitioner is entitled to seek parity with similarly-placed accused persons, namely, Maninder Singh @ Bittu Aulakh, Surjit Singh, Baljinder Singh @ Sonu and Deep Singh @ Deepu to whom bail has been granted bail vide orders (P11 to P14); (iii) the prosecution misled and misquoted the facts before this Court on 17.04.2017 at the time of deciding the third bail application; (iv) there is no likelihood of conclusion of trial in near future and the petitioner cannot be incarcerated indefinitely; (v) it was wrongly stated before this Court that the petitioner has been charge-sheeted under the Arms Act or under the Indian Penal Code; (vi)

similarly, no charges u/s 21/25/27 of the NDPS Act have been framed against the petitioner.

(9) We have heard learned counsel for the parties at a considerable length and gone through the record.

(10) At the outset, it may be stated that the petitioner cannot claim parity with the cited examples to whom concession of bail had been granted by this Court. We say so for the reason that in Deep Singh @ Deepu's case, this Court granted bail to him on 30.09.2015 for the reason that he was arrested on 20.05.2013 and the only allegation against him was regarding recovery of some arms and ammunition and not of any synthetic drug. He was granted bail by Special Court on 21.06.2013 but subsequently due to addition of charge under Section 29 of NDPS Act, he was again taken into custody on 05.08.2014. Since he had been already granted concession of bail by Special Court and there was no allegation of misuse of such concession that this Court released him on bail.

(11) Surjit Singh was also granted bail on 28.02.2017 on the grounds identical to Deep Singh case.

(12) In Baljinder Singh @ Sonu's case, this Court after noticing the prosecution allegation, formulated the question regarding 'conscious possession' of contraband by the said suspect and observed that in such doubtful circumstances, the rigors of Section 37(1)(b)(ii) of the NDPS Act could not be applied. The accused in that case by that time had spent 2 years and 9 months in custody.

(13) So far as Maninder Singh @ Bittu Aulakh is concerned, this Court found that there was no allegation of recovery of any contraband at all, hence the rigors of Section 37 of the Act were not attracted.

(14) None of the accused persons, referred to above, are pharmaceutical manufacturers and there were no allegations like misuse of controlled substances allocated by Narcotic Control Bureau for the purpose of manufacturing life saving drugs. Contrarily, allegations against the petitioner and his brother are that they have siphoned off controlled substances of 'ephedrine' and 'pseudoephedrine' towards manufacturing of synthetic drugs and their invoices/records depicting the supply of drugs manufactured with such controlled substance, to various firms were either fake or non-existent. The allegations made against the petitioner are surely grave in nature.

(15) The petitioner's contention that the loss of controlled substances would, at best, amount to an offence under Section 29 of the NDPS Act for which the maximum sentence is three years is to be simply noticed and rejected in view of categorical observations already made by this Court in the order dated 07.10.2015, reproduced above. There, this Court unequivocally has held that if the allegations are proved, the provisions of Section 9A of the Act would be directly attracted and it would amount to commission of an offence under Section 25-A of NDPS Act which is punishable with rigorous imprisonment for a term of 10 years with fine of ₹ 1 lac.

(16) The petitioner may be right in contending that no charges have been framed under the Arms Act or IPC and therefore one of the observations made by this Court in the order dated 17.04.2017 is not supported by record. This, however, would not cut much ice in his favour, for the principal allegation against him is of commission of offence under the NDPS Act. The applicability of rigors of Section 37(1)(b)(ii) has to be seen with reference to the allegations leveled under the NDPS Act alone. The petitioner has been admittedly charge-sheeted under the NDPS Act.

(17) The petitioner's plea that the charges framed against him are identical to those framed against Maninder Singh @ Bittu Aulakh and other accused is totally misconceived and misdirected. The facts and circumstances in which the offence is alleged to have been committed have a material bearing on the formation of opinion whether or not the concession of bail deserves to be extended. The petitioner had initially evaded his arrest. He was declared PO and he surfaced only when the interim pre-emptory bail order was passed by this Court in his favour. Such being the past conduct, we do not find that the petitioner deserves concession of bail at this stage.

(18) Dismissed.

(Surya Kant)
Judge

24.07.2017

vishal shonkar

(Sudhir Mittal)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
Yes