

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

CRM-M-7648-2017

Date of Decision: 17.04.2017

Paramjit Singh Chahal

...Petitioner

VERSUS

State of Punjab

....Respondent

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

Present:- Ms. G.K.Mann, Advocate for the Petitioner.

Ms. Reeta Kohli, Addl. AG Punjab for the State.

SUDIP AHLUWALIA, J.

This is the third petition under Section 439 Cr.PC read with Section 482 Cr.PC filed on behalf of Petitioner Paramjit Singh Chahal seeking regular 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.

2) His earlier two Petitions for bail were rejected by the detailed Orders passed by this Court in CRM-M-1212-2016 and CRM-M-14360-2016 on 17.3.2016 and 30.9.2016, which are on record as **Annexures P1 & P2**

respectively. The detailed reasons for rejection of the earlier petitions have already been set out in the previous Orders.

3) We need not therefore, repeat in detail what is already a matter of record. However, it would be appropriate to advert to the substance of allegations contained in the FIR, which were earlier taken note of by this Court as follows -

“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.”

4) In rejecting the last bail petition, we had observed inter-alia in our earlier Order dated 30.9.2016 -

“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.”

5) We do not find any material change in the circumstances warranting release of the Petitioner midway at this stage when the trial is reported to have substantially progressed. The Ld. counsel for the Petitioner however, submits that as of now, the trial is proceeding at a rather slow pace. But Ld. Additional Advocate General, appearing for the State has informed us that the delay in the trial over the last couple of months is not attributable to the State, but is occurring on account of adjournments frequently sought on behalf of various accused persons.

6) Ld. counsel for the Petitioner has now raised a new submission that the allegations against the Petitioner would appear to indicate only the application of Section 26 of the NDPS Act. In support of this contention, it has been mentioned in the Written Submissions filed on behalf of the Petitioner -

“It is respectfully submitted that it is the case of the prosecution against the petitioner that various invoices recovered from his pharmaceutical units, were found to be fake or the firms mentioned therein were not in existence. It is respectfully submitted that even if, it is presumed though not admitted at all by the petitioner that the alleged invoices were fake & fabricated then this act shall fall under Section 26 (c) of NDPS Act and not under Section 25A of NDPS Act as admittedly the petitioner/his pharmaceutical firms were/are holding a valid license/unique registration number.

It is submitted that as per provisions of The Narcotic Drugs & Psychotropic Substances (Regulation of Controlled Substances) Order, 2013, a person/firm holding a unique registration number under sub-clause (1) of clause 4, shall file quarterly returns with concerned Zonal Director of the Narcotics Control Bureau as per the provisions of sub-clause (6) of Clause (4) of the said Order. Now, Punjab Police & their Ld. Counsel, can very easily say that if a person/firm holding a unique registration number, does not file quarterly returns as per sub-clause (6) of Clause (4) of the said Order of 2013 then this omission shall attract the provisions of Section 25A of NDPS Act against the said person/firm, but it is not legally correct as this particular omission shall only attract section 26 (a) of NDPS Act and not Section 25A of NDPS Act. It is respectfully prayed that the above mentioned provisions may kindly be interpreted by this Hon'ble Court while deciding the present bail application.

*Hence, it is submitted that since the allegations against the petitioner/his pharmaceutical units, are of keeping the fake & false record/accounts/statement/invoices hence, maximum section 26 (c) of NDPS Act can be invoked/attracted against the petitioner which provides for **MAXIMUM SENTENCE OF THREE YEARS OR WITH FINE OR WITH BOTH** and the petitioner is already in custody since last more than one year and three months.”*

7) We however, do not find the aforesaid submissions convincing enough to favour the Petitioner with his release on bail at this stage. We say so firstly for the reason that the Petitioner is undoubtedly being tried for various other

offences including under Sections 21, 22, 25, 25A, 27 & 29 of the NDPS Act apart from certain other grievous offences under the IPC and Arms Act, for which the formal Charges were framed against him a long time ago obviously on the basis of material available before the Trial Court. The Petitioner never sought to have those charges quashed by taking recourse to Section 482 Cr.PC within the prescribed period of limitation or even long thereafter. Besides, as already observed earlier in our last Order passed on 30.9.2016, for the purpose of deciding the bail Petition, we cannot venture into conducting a mini trial or fishing enquiry to determine the genuineness of the documents and reports regarding the business transaction of the Petitioner's Company. In any event, there is no justification to treat the charges already framed against him long ago as being groundless, when the same were not sought to be quashed at the appropriate stage, and when the trial conducted thereafter is apparently nearing its completion in the not too distant future.

8) For the above reasons, the present bail prayer of the Petitioner is rejected.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

April 17, 2017
AS

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

Whether Reportable : ***Yes/No***