

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. M-4643 of 2018 (O&M)
Date of decision: 25.09.2018**

Dr. Shashi Bhushan

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Vikram Chaudhri, Sr. Advocate with
Ms. Isha Goyal, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana
for the respondent-State.

Ms. Varsha Gupta, Advocate for
Mr. Sumeet Goel, Standing Counsel for CBI.

Daya Chaudhary, J.

Petitioner-Dr. Shashi Bhushan has filed the present petition under Section 439 Cr.P.C. for grant of regular bail to him in case FIR No.246 dated 22.09.2017 registered under Sections 21(c), 25 and 32 the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'the NDPS Act') and Rule 6 of the Haryana De-addiction Centre Rules, 2010 at Police Station City Mandi Dabwali, District Sirsa.

Learned senior counsel for the petitioner submits that the petitioner is a qualified and registered Medical Practitioner, who has completed his M.B.B.S. Degree and Post Graduate Diploma in Psychiatric. Initially he was employed in a hospital but subsequently, due to personal reasons, he started his own centre. Learned counsel for the petitioner further submits that the petitioner has falsely been implicated in the case whereas

no offence under the Section in which FIR has been registered is made out. The provisions of NDPS Act are not attracted as there is no bar to keep the medicines by a registered Medical Practitioner or an individual for personal use. The petitioner had already applied for license for Drug Deaddiction Centre but he did not get the same. Learned counsel also submits that the psychotropic substance under the NDPS Act and the drugs approved for medical purposes are covered under Schedules H, H1 and X of Drugs and Cosmetics Rules, 1945 (hereinafter referred to as 'the 1945 Rules'). All formulations and preparations of Buprenorphine are included in Schedule H1. Learned counsel also submits that Schedule H1 medicines can be sold by retail chemists on the prescription of a registered Medical Practitioner without any restriction. The registered Medical Practitioners are exempted from the requirement of the license. The Buprenorphine has been included in the newly created Schedule H1, which contains a list of 46 prescribed drugs vide Gazette Notification GSR-588(E) dated 30.08.2013. The said drug was earlier included in Schedule H at the time of its approval. The concurrent amendments have been made in Rules 65 and 97 of the Drugs and Cosmetic Rules relating to the conditions of license and labelling of the drugs listed in Schedule H1. Learned counsel also submits that as per said amendment, there is no bar in supplying of drugs specified in Schedule H and H1 or Schedule X to a registered Medical Practitioner. Even the labelling of said medicines clearly shows that they are not to be sold by retail without the prescription of a registered Medical Practitioner. Rule 66(1) of the NDPS Rules 1985 permits possession of psychotropic substance by a person, who is lawfully authorized under the Rules. It

includes lawful possession by the licensee and others exempted from license under the exemptions clause being a registered Medical Practitioner for treatment purposes including treatment for addicts. Learned counsel also submits that under Rule 123 of the 1945 Rules, under the Drugs and Cosmetics Act, Schedule K has been appended, which contemplates the practice of a registered Medical Practitioner supplying medicines to his own patients. As per Schedule K, the exemption has been given for having license to be obtained for drugs supplied by a registered Medical Practitioner to his own patients. Learned counsel also submits that after obtaining the police remand, the Investigating Agency has carried out certain searches and seizures but in complete violation of the law of the land as neither any search warrants were issued/obtained nor any information was sent to the petitioner's family. The Deaddiction Centre of the petitioner was searched in absence of any responsible member of his family which shows that it was a case of tainted investigation. Learned counsel also submits that same allegations like one Dr. Rajinder Singla, are there against the petitioner, who approached this Court by way of filing Criminal Misc. No. M-37530 of 2015 and he was released on regular bail vide order dated 18.11.2015. At the end, learned counsel for the petitioner submits that while dismissing the regular bail of the petitioner, all these facts have not been taken into consideration and in view of judgment rendered by this Court in ***Inderjeet Singh @ Laddi and others vs. State of Punjab, (2014) 3 RCR (Criminal) 953***, the petitioner is entitled for interim bail till the receipt of FSL report. The petitioner is having no criminal background and he is in custody since 22.09.2017. Learned counsel for the petitioner has relied upon

order dated 06.02.2015 rendered in *CWP No.1361 of 2015 titled as Dr. Ashwin Mohan Vs. Union of India & others*, order dated 22.12.2015 in *CM No.16433 of 2015 in CWP No.26763 of 2014 titled as Dr. Ashish Sharma Vs. State of Punjab & others*, order dated 26.11.2015 in *CWP No.4038 of 2015 titled as Syncom Healthcare Limited and another Vs. Union of India & others*, order dated 26.11.2015 in *CWP No.17658 of 2015 titled as Dr. Rajinder Singla Vs. State of Punjab*, order dated 26.11.2015 in *CWP No.9779 of 2015 titled as Chander Mohan Behl Vs. Union of India & others*, order dated 22.01.2018 in *CWP No.1326 of 2018 titled as Dr. Rahul Rai & others Vs. State of Haryana & others*, order dated 27.03.2015 in *CRM-M No.5506 of 2015 titled as Chander Mohan Behl Vs. Narcotic Control Bureau, Chandigarh*, order dated 18.11.2015 in *CRM-M No.35370 of 2015 titled as Dr. Rajinder Singla Vs. State of Punjab*, order dated 27.10.2017 in *CRM-M No.38898 of 2017 titled as Nitin Bansal Vs. State of Punjab & order dated 07.10.2017 in CRM-M No.37753 of 2017 titled as Dr. Deepak & another Vs. CBI & others* in support of his contentions.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that earlier on two occasions, the bail petition filed by the petitioner has been dismissed. The petitioner is not entitled for regular bail keeping in view the seriousness of offence. As per allegations levelled in the FIR, the petitioner was running a Deaddiction Centre under the name and style of M/s Daman Neuro Psychiatry Center and raid was conducted by Deputy Civil Surgeon and DCO. During raid, the petitioner was found stocking eight types of drugs

containing Buprenorphine, which were supplied and meant for registered Drug Deaddiction Centre only. A huge quantity of tablets were recovered from the petitioner and he was apprehended at the spot. He was taken into custody on 22.09.2017.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on record.

The bail application filed by the petitioner was dismissed by the Additional Sessions Judge, Sirsa vide order dated 09.10.2017 on the ground that the petitioner does not possess any license to run Drug Deaddiction Centre and he was found in possession of drugs covered under the NDPS Act. Running Drug Deaddiction Centre without having any license is violative of provisions of the NDPS Rules. It was also mentioned that huge recovery was effected from the petitioner.

The petitioner is registered Medical Practitioner and his name has been duly entered categorically in the register of Punjab Medical Council in terms of being duly enrolled in the register of Punjab Medical Council under the Punjab Medical Registration Act-II, 1916. In terms of Section 15(2)(d) of the Indian Medical Council Act, 1956 being so enrolled in; the petitioner is entitled to “practice medicine in any state”.

By virtue of Section 21(1) of the Indian Medical Council Act, 1956, the Medical Council of India shall maintain “Indian Medical Register”, wherein, names of all persons enrolled on any State Medical Register and who possess recognized medical qualification are entered. Consequently, the petitioner's name has also been entered into the said

register.

The word Registered Medical Practitioner has been defined under Section 2(ee) of the Drugs and Cosmetics Rules, 1945, which reads as under: -

- (ee) “Registered medical practitioner” means a person—*
- (i) holding a qualification granted by an authority specified or notified under section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); or*
 - (ii) registered or eligible for registration in a medical register of a State meant for the registration of persons practicing the modern scientific system of medicine [excluding the Homoeopathic system of medicine]; or*
 - (iii) registered in a medical register [other than a register for the registration of Homoeopathic practitioners] of a State, who although not falling within sub-clause (i) or sub-clause (ii) is declared by a general or special order made by the State Government in this behalf as a person practicing the modern scientific system of medicine for the purposes of this Act; or*
 - (iv) registered or eligible for registration in the register of dentists for a State under the Dentists Act, 1948 (16 of 1948); or*
 - (v) who is engaged in the practice of veterinary medicine and who possesses qualifications approved by the State Government;] ”*

The NDPS Act is essentially divided into two parts;

a. Narcotic Drugs

b. Psychotropic Substance.

Section 2(xiv) defines 'Narcotic Drugs' as coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs.

Section 2(xxiii) defines 'Psychotropic Substance' as means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule.

Buprenorphine is listed at Serial No.92 of "the Schedule" of the NDPS Act as a psychotropic substance.

Chapter III of the NDPS Act dealing with 'Prohibition, Control and Regulation' contains Section 8 which, inter alia, postulates as under: -

"Section 8 Prohibition of certain operations: no person shall

(a)xxx

(b)xxx

(c)produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation."

Section 80 of the NDPS Act provides that the provisions of this Act or the rules made thereunder shall be in addition to, and not in

derogation of the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.

NDPS Rules, 1985 have been framed by the Central Government in exercise of the powers conferred by Section 9 read with Section 76 thereof.

Chapter VII of the said Rules deals with 'Psychotropic Substance'.

Rule 65-A of the NDPS Rules, 1985 reads as under: -

“65A. - Sale, purchase, consumption or use of psychotropic substances. - No person shall sell, purchase, consume or use any psychotropic substance except in accordance with the Drugs and Cosmetics Rules, 1945.”

As a logical corollary and harmonious interpretation of Section 8(c), 80 of the NDPS Act and Rule 65-A of the NDPS Rules, it is clear that essentially the question as to whether a person is entitled to 'sell, purchase, consume or use' any psychotropic substance could only be answered by referring to the relevant provisions contained in the Drugs and Cosmetics Act, 1940 and the rules framed thereunder.

Section 3(b) of the Drugs and Cosmetics Act, 1940 defines the word 'drug' which include in its ambit 'all medicines for internal or external use of human beings' to be used for or in the diagnosis treatment etc.

Section 12 of the Drugs and Cosmetics Act, 1940 postulates 'Power of Central Government to make rules' in terms of sub-section 2 thereof, rules framed may specify particular class of drugs for the import of which a licence is required as well as the form and conditions of such

licences; authority empower to issue the same etc.

In terms of Section 12 and other provisions, Central Government framed Drugs and Cosmetics Rules, 1945. Part VI deals with 'Sale of Drugs Other Than Homeopathic Medicines' i.e., relating to allopathic medicine. Under Rule 59(1) thereof the State Government has been empowered to appoint licensing authority.

Rule 61 deals with 'Forms of licenses to sell drugs' and provides that in order to sell, stock, exhibit or offer for sale or distribute drugs specified in all Schedules, except Schedule C, C(1) and X, the requisite licence shall be issued in a requisite form (form 20, Form 20-A or Form 20-B).

Rule 65 provides for 'Condition of Licenses' and in terms of Rules 65(3)(1)(h) thereof whenever the drugs specified in Schedule H-1 are supplied, a separate register has to be made containing the name and address of the prescriber, the name of the patient, the name of the drug and the quantity supplied.

Further Rule 65(9)(b) read as under: -

“(b) The supply of drugs specified in [Schedule H and Schedule H1] or Schedule X to Registered Medical Practitioner, Hospitals, Dispensaries and Nursing Homes shall be made only against the signed order in writing which shall be preserved by the licensee for a period of two years.”

Meaning thereby, that the drug specified in Schedule H-1 should be supplied to any Registered Medical Practitioner with the only rules being that: -

- a. Order should be in writing.
- b. The licensee who is supplied shall preserve the above order for two years.

In terms of Rule 97 thereof which deals with 'Labelling and Packing of Drugs other than Homeopathic Medicines' for Schedule H-1 drugs, the following are the relevant provisions contained in Rule 97(i)(e) which reads as under: -

“(e) if it contains a drug substance specified in Schedule H1, the drug formulation shall be labelled with the symbol Rx which shall be in red and conspicuously displayed on the left top corner of the label, and shall also be labelled with the following words in a box with a red border:

Schedule H1 Drug-Warning;- It is dangerous to take this preparation except in accordance with the medical advice.

Not to be sold by retail without the prescription of a Registered Medical Practitioner.”

In terms of both the above Rules, viz. Rules 65 and 97, Schedule H-1 has been issued with the caption 'Schedule H-1 (see Rules 65 and 97) Prescription Drugs'. The said Schedule contains as many as 46 drugs and Buprenorphine specifically falls at Sr. No.3 thereof.

Rule 123 falls in Part XI titled as 'Exemptions' and provides as under: -

“123. Exemptions.- The drugs specified in Schedule K shall be exempted from the provisions of Chapter IV of the Act and the rules made thereunder to the extent and subject to the conditions specified in that

Schedule.”

Chapter IV of the Drugs and Cosmetics Act, 1940 inter alia deals with penalty/offences under the Act. In terms of the said rules, Schedule K has been propounded by the Central Government and Sr. No.5 categorically exempts the drugs supplied by a Registered Medical Practitioner to his own patient subject to certain conditions.

Medical Council of India has been constituted in terms of Section 2(b) of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India has issued 'The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002'.

Clause 6.3 occurring in Chapter 6 thereof clearly stipulates as under: -

“6.3 Running an open shop (Dispensing of Drugs and Applicances by Physicians): - A physician should not run an open shop for sale of medicines for dispensing prescriptions prescribed by doctors other than himself or for sale of medical or surgical appliances. It is not unethical for a physician to prescribe or supply drugs, remedies or appliances as long as there is no exploitation of the patient. Drugs prescribed by a physician or brought from the market for a patient should explicitly state the proprietary formulae as well as generic name of the drug.”

Further still, Section 27 of the IMC Act allows persons enrolled on the Indian Medical Register to practice as a medical professional in any part of India and to 'recover in due course of law any charge in respect of medicaments or any fees to which he may be entitled'. Section 27 reads as

under: -

“27. Privileges of persons who are enrolled on the Indian Medical Register.—Subject to the conditions and restrictions laid down in this Act regarding medical practice by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications to practice as a medical practitioner in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled.”

It is, thus, clear that Buprenorphine is available in the market for sale by chemists on the prescription of a Registered Medical Practitioner without any riders except for maintenance of records and the change in labelling of the container in accordance with Schedule H-1 drugs.

There is no provisions whatsoever either under the NDPS Act or Drugs and Cosmetics Act, 1940 which in any way restricts the discretion of the Registered Medical Practitioner as regards the quantum of dose of Buprenorphine and the duration for which it is prescribed or supplied. No adverse inference with regard to the bonafides of the practitioner can therefore be drawn simply from the quantity and duration of the medicine stocked or prescription in a few cases being for a longer duration than considered usual but the daily dose still being well within the therapeutic range, which was obviously dependent on the condition and circumstances of the patient, it being a matter of professional judgment, particularly when patient details and the quantity of drug dispensed are entered in the records

maintained.

The relevant portion of order dated 18.11.2015 passed by this Court in Criminal Misc. No. M-37530 of 2015 is reproduced as under: -

“ Rule 65(1), inter alia, provides that the manufacture of any psychotropic substance other than those specified in Schedule I shall be in accordance with the conditions of license granted under the D and C Rules and D and C Act. In other words, insofar as the psychotropic substances not mentioned in Schedule I to the NDPS Rules but mentioned in the Schedule to the NDPS Act are concerned, their manufacture shall be governed by the D and C Act and Rules and not by the NDPS Act or NDPS Rules. Rule 66 relates to possession etc., of psychotropic substances. Sub-Rule (1) thereof provides that no person shall possess "any psychotropic substance" for any of the purposes covered by the D and C Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under the NDPS Rules. The expression "any psychotropic substance" obviously has reference to those listed in Schedule I to the NDPS Rules. Rule 64 is the governing rule in Chapter VII of the NDPS Rules. When a psychotropic substance does not find mention in Schedule I to the NDPS Rules, the prohibition qua possession contained in Rule 64 does not apply. That being the case, in respect of such a psychotropic substance, Rule 66 would also not apply as it has reference to only those psychotropic substances which are included in Schedule I to the NDPS Rules. Rule 67 of the NDPS Rules relates to

transport of psychotropic substances. It is expressly subject to the provisions of Rule 64 and clearly has reference to the transport, import inter-state or export inter-state of those psychotropic substances which are included in Schedule I to the NDPS Rules. The rule would have no applicability in respect of those psychotropic substances which are not to be found in Schedule I to the NDPS Rule. Clearly, then, inasmuch as Buprenorphine Hydrochloride is not included in Schedule I to the NDPS Rules, its manufacture, possession, sale, transport would neither be prohibited nor regulated by the NDPS Rules and consequently by the NDPS Act. It being Schedule H drug would fall within the rigours of the D and C Act and Rules.

Buprenorphine Hydrochloride I.P. is also a medication and is used as a pain reliever. Recently, it is also being used to treat opiate addiction (such as addiction to heroin). It has legitimate uses as an analgesic and for de-addiction. However, it is also capable of misuser being a psychotropic substance. Perhaps because of this reason, it was left out of Schedule I to the Narcotic Drugs And Psychotropic Substances Act but is very much regulated under the D and C Act and Rules.

As indicated above, Buprenorphine Hydrochloride is a Schedule H drug under the D and C Act and Rules and, though it is a psychotropic substance under the Narcotic Drugs And Psychotropic Substances Act, it is not included in Schedule I to the NDPS Rules. That being the case, its manufacture, possession of sale is not prohibited. As such, there is no contravention of the

provisions of the NDPS Rules. Consequently, the offence under Section 8 of the Narcotic Drugs And Psychotropic Substances Act is not made out. Obviously, punishment under Section 22 of the Narcotic Drugs And Psychotropic Substances Act is also not attracted.”

Same issue was there before this Court in CWP No.1361 of 2015 and protection from arrest was given to the petitioner till the adjourned date. Similarly, in another case titled as Dr. Ashish Sharma vs. State of Punjab and others, CWP No.26763 of 2014, the trial Court was directed to adjourn the case beyond the date given by this Court. Similarly, in CWP No.4038 of 2015, CWP No.17658 of 2015 and CWP No.9779 of 2015, the trial Court was directed to adjourn the case beyond the date given by this Court. In one case i.e., CWP No.1326 of 2018, while issuing notice of motion on 22.01.2018, it was directed that no coercive measure be adopted against the petitioners. In Criminal Misc. No. M-5506 of 2015, the petitioner was granted interim bail and it was extended from time to time and ultimately, the case was adjourned sine-die by awaiting the decision of the quashing petition. In one more case i.e., Criminal Misc. No. M-37753 of 2017 titled as Dr. Deepak and another vs. CBI and others, this Court while issuing notice of motion, directed the respondents not to adopt any coercive measures.

In the present case also, the petitioner is in custody since 22.09.2017. However, earlier two petitions were dismissed as withdrawn vide orders dated 30.11.2017 and 14.12.2017 and the present petition is the third one, which has been filed under changed circumstances as now his

custody is approximately one year. No other case is pending against the petitioner. Challan has been presented and the trial may take some time to conclude. No purpose would be served by keeping the petitioner in custody. Moreover, all the witnesses are official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence.

Accordingly, the present petition is allowed and petitioner, namely, Dr. Shashi Bhushan, is directed to be released on regular bail to the satisfaction of the trial Court subject to following conditions :-

- (1) The petitioner shall furnish a personal bond in the sum of ₹5 lacs (Rupees Five Lacs) with the sureties in the like amount to the satisfaction of the trial Court.
- (2) The petitioner shall surrender his passport, if already not seized, any hold by him, before the trial Court.
- (3) He shall not leave country without permission of Court.
- (4) He shall not tamper with the evidence or do any act which will create a reasonable ground to assume that the petitioner is trying to create hurdle in the investigation or trial of the case which will entail cancellation of bail.
- (5) Any other condition which may be imposed by the trial Court.

25.09.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes