

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.49131 of 2017

Decided on: 12.01.2018

Raj Kumar Chugh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Parvez Chugh, Advocate for the petitioners.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of anticipatory bail to the petitioner in case FIR No.02, dated 04.01.2017 under Sections 22/61/85 of IPC and Section 25 of the NDPS Act, registered at Police Station Guruharsahai, District Ferozepur (Annexure P-1).

Learned counsel for the petitioner submits that the petitioner is running a chemist shop and is holding a valid licence. When the FIR was registered, the matter was got investigated and during the investigation, the police found that on the day when the FIR was registered, the petitioner was bringing certain medicines from his residence to shop, for which he was holding valid licence and subsequently, during investigation, he has also produced the licence and purchase bills before the Investigating Officer.

In view of the investigation, the police submitted a cancellation report. On receiving the cancellation report, the Court of Special Judge, Ferozepur, after issuing notice to the prosecution as well as to the Drug Inspection passed the following order:-

“3. It is further the case of the prosecution that on 11.1.2017 chemist union, District Ferozepur gave an

application to the SSP, Ferozepur regarding innocence of Raj Kumar and the said application was marked to the SP(Investigation) who in the course of his investigation took report from the Drug Control Officer, Ferozepur, who reported that the tablets containing Clonazepam Alprazolam and Diazepam were covered under the Drugs and Cosmetics Act 1940 in schedule H and were formulation medicines which the licence holder could legally stock and buy, provided he has the bills regarding the purchase of the same. Thereafter in the inquiry the Investigating Officer found that Raj Kumar had a wholesale licence and the bills of the medicines allegedly recovered from him but at the time when the same were seized from him his licence and bills were lying at Friends Medical Store and he could not produce them before ASI Amrik Singh. Thereafter report was called from the drug Inspector Sh Ravi Gupta regarding the licence and the bills who reported that as per license Raj Kumar could legally stock the said medicines. It was found during the inquiry that these medicines were not kept by Raj Kumar without any wrong intention and there was a strike of the chemists. He had kept medicines with him in order to avoid any inconvenience to his regular clients/patients. The Inquiry Officer in his inquiry also found that Raj Kumar was a man of good conduct. He had no previous criminal record. He was a social worker and this was verified from the SHO, Police Station, Guruharsahai and incharge 181 help line branch DPO, Ferozepur and the respectables of Guruharsabhai. The SP((Investigation) thus concluded that no offence under Section 22 of the Act was made out as Raj Kumar had a licence to purchase, stock and sell the medicines which were recovered from him and he had bills of the same and he was carrying the

medicines from his house to his store after strike of the chemists had concluded. Thus, the Investigating Officer found Raj Kumar innocent. On the basis of this inquiry report, SSP, Ferozepur has recommended the cancellation.

4. Upon presentation of the cancellation a notice was issued to ASI Amrik Singh who appeared in the court and gave his statement that he did not agree with the cancellation report as accused had not informed him regarding any drug licence or bill during his interrogation or the notification of the officiating SHO SI Jagdev Singh. However, since the cancellation was based on the inquiry of the SP (Investigation) in the course of which he had obtained opinion of the Drug Control Officer Ferozepur and the Drug Officer Ferozepur who had verified the whole sale licence and bills, accordingly this Court deemed it appropriate to summon Ravi Gupta Drug Inspector and accordingly he was summoned to the court. The Drug Inspector through his statement recorded in the court stated that during the investigation of this case SP(D) Ferozepur had asked for report on the basis of the licence no.104549 and 104550 which was granted on 26.7.2011 and is valid upto 25.7.2021 in the name of M/s Friends Medical Hall, Balram Market, Guruharsahai whose qualified and competent person is Sh. Raj Kumar son of Sohan lal and also bills regarding purchase of medicine by the above said firm. He had given his written report no.Drug/2017-36 dated 17.1.2017 to SP, Investigation Ferozepur after going through the said documents. He had verified the licence and the bills. All the medicines mentioned to have been recovered by the police are covered under the licence.

5. I have heard the Additional Public

Prosecutor and with his assistance, I have gone through the file. Apparently, though accused Raj Kumar was apprehended with the above detailed manufactured drugs he had a wholesale licence to purchase, stock and sell the same which was valid and he also had the bills vide which the same were purchased. The report of the drug Inspector, who also appeared in the court and reported that he had verified the licence and bills, is the basis of the cancellation report moved by the police. Thus as reported by the drug Inspector all the medicines recovered from the accused were covered under the licence hence no offence would be made out under the NDPS Act and accordingly, the cancellation report filed by the police is accepted and the accused is discharged for the time being.

6. Cancellation file be consigned to the quarter concerned and the proceedings of this court be consigned to the record room.”

According to the counsel for the petitioner, this order has attained finality as prosecution has not filed any appeal against the same. Later on, on the basis of a letter issued by the Inspector General of Police, Bathinda Zone, the matter was reinvestigated and on the basis of reinvestigation report, which is attached as Annexure P-6, the challan under Section 173 (8) of Cr.P.C was presented against the petitioner and in pursuance thereof, the petitioner is sought to be arrested.

Learned counsel for the petitioner has submitted that when the cancellation report was accepted by the Special Judge vide order dated 17.3.2017, the Special Judge again passed an order on 6.10.2017 that since the cancellation report was accepted vide a detailed order dated 17.3.2017, the Special Judge having expressed an opinion on the case it would not be in the interest of justice to hold the trial. Learned counsel has further

submitted that once the cancellation report was accepted by the trial Court and the petitioner was discharged, the police had no authority to conduct reinvestigation within the purview of Section 173 (8) Cr.P.C. Learned counsel has relied upon the judgment in Vinay Tyagi Vs. Irshad Al @ Deepak & ors., 2013(2) R.C.R. (Criminal) 197, to submit that it has been held by the Hon'ble Supreme Court that in case of fresh investigation, reinvestigation or de novo investigation, there has to be a definite order of Court. It is, thus, submitted that without obtaining an order of the Court, the police was not competent to re-investigate the matter and submit a report under Section 173(8) of Cr.P.C. especially when the order dated 17.3.2017 was never challenged by the prosecution by way of filing revision or appeal.

In reply, learned State counsel, on instructions from HC Mahinder singh, has submitted that reinvestigation was done on the basis of administrative instructions issued by the Inspector General of Police directing that in case the police submits a cancellation report under the NDPS Act the same should be approved by an officer of the rank of Inspector General of Police.

I have heard learned counsel for the parties.

Without commenting anything on the merits of the case and considering the fact that the petitioner has already been discharged by the trial Court vide order dated 17.03.2017, which has attained finality and in view of the judgment of the Hon'ble Supreme Court in *Vinay Tyagi's case (supra)* on the basis of which the Police authorities without any order of the competent Court of law could not reinvestigate the case under section 173 (8)Cr.P.C., this petition is allowed. The petitioner is directed to be released on bail, subject to the conditions mentioned below, as envisaged in Section

438(2) Cr.P.C :-

1. He shall make himself available for interrogation by a police officer as and when required;
2. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
3. He shall not leave India without previous permission of the Court.

(ARVIND SINGH SANGWAN)
JUDGE

12.01.2018

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