

Crl. W.P. No. 632 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Crl. W.P. No. 632 of 2018

Rajan BhardwajPetitioner

Versus

Central Bureau of Investigation and othersRespondents

2. Crl. Misc. No. M-31301 of 2018

Rajiv BhardwajPetitioner

Versus

Central Bureau of Investigation and othersRespondents

DATE OF DECISION: 23.10.2018

BEFORE : - HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Vikram Chaudhri, Senior Advocate with
Ms. Isha Goyal, Advocate and
Mr. Rahil Mahajan, Advocate
for the petitioner(s).

Mr. Gaurav Garg Dhuriwala, Senior DAG, Haryana.

Ms. Ramandeep Kaur, Advocate for
Mr. Sumeet Goel, Standing Counsel for CBI.

DAYA CHAUDHARY, J.

This judgment of mine shall dispose of two petitions bearing CRWP No. 632 of 2018 and Crl. Misc. No. M-31301 of 2018 filed by Rajan Bhardwaj and Rajiv Bhardwaj, respectively. However, for the sake of convenience, the facts are being extracted from CRWP No. 632 of 2018.

Petitioner-Rajan Bhardwaj has approached this Court by way of

filing a petition under Articles 226/227 of the Constitution of India read with Sections 482/483 of the Code of Criminal Procedure for releasing him from custody in case FIR No. 57 dated 3.7.2018 registered under Sections 21,22 and 29 of NDPS Act at Police Station Gharinda, District Amritsar Rural as his arrest is in violation of Articles 14,21,22 (1) and 22 (2) of the Constitution of India. A prayer has also been made for setting aside orders dated 9.7.2018 and 11.7.2018 (Annexures P-9 and P-10) as well as subsequent order, whereby, the petitioner was remanded to police/judicial custody. It has also been prayed that respondent No.2 be directed to lay down the guidelines in State of Punjab in the form of Handbook for its officers investigating the offences under Section NDPS Act to ensure transparent and scientific investigations free from bias as has been laid down by the Narcotics Control Bureau under the Ministry of Home Affairs, Government of India by preparing the Field Officers' Handbook for Drug Law Enforcement.

Briefly, the facts of the case as made out in the present petition are that the petitioner and his brother Rajiv Bhardwaj are Directors of the Company known as M/s Willmark Pharmaceuticals Private Limited, which is duly licensed Pharmaceutical Company engaged in manufacturing of various drugs as per the licence issued and renewed from time to time by the Drug Authorities under the Drugs and Cosmetics Act, 1940 as well as the Rules framed therein. In terms of aforesaid licence, the petitioner's company was manufacturing various drugs including preparation of Tramadol Hydrochloride after having due approval by the Drug Authorities. The Company has been procuring the raw material of Tramadol from the licensed distributor i.e. M/s S.K. Jain Trading Private Ltd. against proper

invoice and the same was approved by the Drug Authorities from time to time. However, no approval was given by the Drug Authorities for manufacture of any drug containing Tramadol for the last seven months, but the raw material to the extent of about 12.5 kgs of Tramadol was lying in the factory premises with due approval of the Drug Authorities, which was duly registered in the raw material register maintained by the petitioner's company. It is further averred that FIR No. 57 dated 3.7.2018 under Sections 21/22/29 of NDPS Act was registered at Police Station Gharinda, District Amritsar Rural on the basis of secret information mentioning that a person, namely, Karandeep Sharma was apprehended with 40,000 intoxicating tablets without any label as well as packing in a loose form. In the FIR, neither the name of the petitioner nor his Company was mentioned. No overt act was also attributed to both the petitioners, who are brothers. The premises of petitioner's Pharmaceutical Company were searched by the police on 3.7.2018 but no incriminating was found and no Panchnama was drawn. The CCTV footage was scanned by the police authorities but of no consequence. This process continued on the next date i.e. 4.7.2018 from 10.00 am uptill 5.00 pm. On 4.7.2018, one of the employees in the petitioner's company, namely, Bharat Bhushan, who was looking after the dispatch of the stocks was illegally picked up by the police. On repeated requests and representation, an assurance was given by the police to let him off after conducting an inquiry. Said employee remained in custody of police for one day and was shown to be arrested on 5.7.2018. The remand application dated 6.7.2018 shows that accused-Karandeep Sharma made a confessional/disclosure statement to the effect that it was Bharat Bhushan, who had supplied the said tablets to him from the petitioner's company. The

name of the brother of the petitioner was also mentioned in the remand application showing him as owner of the Company. Thereafter, the petitioner and his brother met the police officers and explained that they had no business to deal with loose tablets. It was also explained that the petitioner's company was in possession of 12.5 kgs of stock of Tramadol, which was purchased against invoice/bill dated January, 2016 and complete record thereof had also been maintained by the Company. The police was apprised that the raw material was lying in the premises as per rules and regulations. However, the police without any checking the said stock took the same into possession. On 7.7.2018 around 7.30 pm, the petitioner was called outside his house in Basant Avenue, Amritsar by certain policemen from Police Station Gharinda. As the petitioner had already appeared before the police authorities during last three-four days and was apprehending no foul play, he came to meet the said officials and was taken into illegal custody by police officials of Police Station Gharinda. Upon repeated requests of the family, it was stated to them that some inquiry was being carried out for which the presence of the petitioner was required. During the course of custody, the petitioner was also taken to his factory premises but no anomaly was detected. However, said stock of 12.5 kgs of Tramadol Tablets was taken into possession by the police despite showing the relevant record for its purchase. After two days of illegal confinement, the petitioner was shown to be arrested on 8.7.2018. In the petitioner's remand application dated 9.7.2018, it was mentioned that employee of the petitioner's company, namely, Bharat Bhushan made a disclosure statement that he had supplied the said tablets to Karandeep Sharma at the instance of the petitioner. Thereafter the petitioner was sent to judicial custody vide

order dated 11.7.2018. It was also mentioned in the application of remand dated 9.7.2018 that the petitioner was to be taken to Ambala for some search but actually he was never taken to Ambala. The petitioner was sent to judicial custody vide order dated 11.7.2018, whereas, his custody was not handed over to jail authorities uptill 7.00 pm of 12.7.2018.

On 8.7.2018, the premises of the petitioner's company was sealed by placing locks, however, no panchnama was drawn and no notice of seizure was given. As per case of the prosecution, apart from said 12.5 kgs powder, nine tablets were recovered from the premises of the petitioner's company from an open area (Varanda), whereas, the mode and manner of recovery was manipulated. Said tablets were shown to be containing salt, namely, Nimesuleide. The said tablets were put in a packet but no signatures of any authorized representative of the petitioner's company were obtained. As per case of the petitioner, neither in the FIR nor in the remand application, the police had disclosed the ingredients of any allegedly recovered material or the alleged 12.5 kgs powder recovered from the petitioner's factory was termed as intoxicating material, which was kept in stock against proper invoice/bill. As per case of the petitioner, the Tramadol tablets do not fall under the NDPS Act. Vide notification bearing No. S.O. 1761 (E) dated 26.4.2018, Tramadol has now been brought in 'The Schedule' to the NDPS Act in the list of Psychotropic Substances at serial No. 110Y. However, vide separate notification dated 13.7.2018, the Central Government has clarified that after the Table, the following note shall be inserted:-

“The licensed manufacturers, importers and exporters of Tramadol shall be covered under the provisions of this

notification after the expiry of a period of 120 days from the date of its publication in the Official Gazette.:

The petitioner's company could have returned its stock till 26.8.2018 as per said notification dated 13.7.2018, meaning, thereby the provisions of NDPS Act were not applicable till 26.8.2018. Thereafter a show cause notice was issued to the petitioner's company for cancellation of drug manufacturing licence and accordingly the manufacturing and sales activities were suspended vide notice dated 13.7.2018. Said notice relates to certain incident which has occurred in the month of January, 2018, whereby, certain tablets containing Tramadol were recovered and seized, whereas, after due inspection and verification carried out by the then drug authorities it was clearly recorded that the petitioner's company had a limited stock of 12.55 kgs of Tradamol as on said date. Said show cause was issued at the instance of the police authorities.

Learned senior counsel for the petitioners contends that it is a classic case of abuse of power and there is complete non-compliance of guidelines laid down by Hon'ble the Apex Court in **D.K. Wasu Vs. State of West Bengal** 1997 (1) SCC 416. Neither any memo of arrest was prepared at the time of arrest nor petitioner-Rajan Bhardwaj was produced before the concerned Magistrate within a period of 24 hours. The custody of petitioner-Rajan Bhardwaj was illegal as no proper procedure was followed, which has resulted in deprivation of petitioner's liberty in violation of Articles 21, 22 (1) and (2) of the Constitution of India. Learned senior counsel further contends that even a prima facie case under the NDPS Act was not made out. The remand order has been passed by the learned Magistrate in a mechanical and routine manner without any application of

mind. There was no material on record to connect the petitioners, who are brothers in the commission of offence. The petitioners' company is not connected with loose tablets, which were without packing and label, alleged to have been recovered from one Karandeep Sharma. The only material in the remand application was alleged disclosure statement made by accused-Karandeep Sharma, which has no sanctity in the eyes of law and cannot be considered as valid piece of evidence being hit by the provisions of Section 25 of the Indian Evidence Act. Learned senior counsel also submits that scope of a disclosure statement made in custody of the police is only to the extent of Section 27 of the Evidence Act, where, any fact could be discovered. The alleged disclosure statement made by said Karandeep Sharma did not lead to any discovery of fact and the same is a weak piece of evidence, which cannot be relied upon being uncorroborated. There was no material on record before the learned Magistrate to extend the remand of the petitioner to custody. Alleged 12.5 kgs of intoxicating powder was in fact Tramadol, which was duly purchased and its procurement in petitioner's company was duly registered in the stock register as per rules and regulations under the Drug and Cosmetics Act, 1940. It is also the argument of learned senior counsel that the remand application was allowed without verifying the contents of the alleged recovery as well as the licence of the petitioners' Pharmaceutical unit.

Learned senior counsel also submits that there are no guidelines for Punjab Police like the Field Officers Handbook issued by the Narcotics Control Bureau or the CBI manual issued by CBI. Even as per High Court Rules and Orders Volume 3 Chapter XII Part B, it is clearly mandated that the remand should be given in a case of "Real necessity" and Court cannot

act in a mechanical manner. As per Articles 21 and 22 (1) (2) of the Constitution of India, no person can be deprived of his life or personal liberty except according to the procedure established by law. It is also the mandate of Article 22 of the Constitution of India that no person shall be arrested/detained in custody without being informed, as soon as may be, of the grounds of such arrest. The accused cannot be denied the right to consult and to defend by a legal practitioner of his choice. In case any person is arrested and detained in custody, he is required to be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for journey from the place of arrest to the Court of Magistrate. Learned counsel has also relied upon the judgment of Constitutional Bench of Hon'ble the Apex Court in the case of **Ram Narayan Singh Vs. State of Delhi and others** 1953 SCR 652, **Madhu Limaye and others Vs. State of Bihar** 1969 AIR (SC) 1014, **Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and others** 2012 (4) RCR (Criminal) 655, **Union of India and another Vs. Rakesh Manekchand Kothari and another** Special Leave to Appeal (Crl.) No. 9727 of 2015 decided on 23.11.2015, judgment of Delhi High Court in case **Gurucharan Singh Vs. Union of India and others** W.P. (Crl) 307/2016 decided on 27.4.2016, **The Directorate of Enforcement Vs. Karti P. Chidambaram** Special Leave Petition (Criminal) No. 9360/2018 decided on 15.3.2018, judgment of this Court in the case of **Gurpal Singh Vs. State of Punjab** 2016 (1) DC (Narcotics) 214, of Gujarat High Court in the case of **Rakesh Maekchand Kothari Vs. Union of India and others** Special Criminal Application (Habeas Corpus) No. 4247 of 2015 and of Delhi High Court in the case of **Rajbhushan Omparkash Dixit Vs. Union of India**, 2018 (2)

RCR (Criminal) 295, in support of his contentions.

Learned counsel for the respondent-State has opposed the submissions made by learned senior counsel for the petitioners and submits that provisions of NDPS Act were duly complied with. Petitioner Rajiv Bhardwaj and Bharat Bhushan were nominated as accused in the case after taking into consideration all the documents as they were found to be involved in the commission of offence. The manufacturing licence of the Company was valid upto 31.12.2017. Nine tablets identical to 40,000 tablets recovered from Karandeep Sharma were recovered from the premises of the company of the petitioners. The accused-petitioners were having opportunity to dispose of 12.55 kgs of Tramadol Powder since January 24, 2018 i.e. since the time manufacturing licence of the firm was placed under suspension but despite that said Tramadol Powder was not disposed of by the Directors of the said Firm. During search of the premises of the petitioners' company on 10.7.2018, 12 kgs 500 gms raw material was recovered which was taken into possession for chemical analysis. The accused-petitioners were asked by the Drug Inspector to produce manufacturing, testing or any other relevant record at the time of inspection but they failed to produce any such document. The said drugs were seized just to prevent the misuse in the interest of health of the people of the State and also due to violation of interim orders regarding suspension of permission to manufacture Tramadol formulation vide Drugs (1) Pb.2018/1165 dated 23.1.2018, which was duly served to the wife of petitioner-Rajan Bhardwaj during inspection dated 24.1.2018. Thereafter offence under Section 25/26/36 of the NDPS Act was added vide diary No. 9 dated 10.7.2018. Learned State counsel further submits that the accused-

petitioners torn the packing of the intoxicating tablets and flushed away the tablets in the sewerage just to destroy the evidence. Learned State counsel also submits that it cannot be said to be a case of illegal custody as not only the provisions of law were followed but huge recovery was effected from the premises of the petitioners' company. The accused has no right to challenge the investigation keeping in view the huge quantity as well as nature of offence. Learned State counsel has also brought to the notice of this Court that petitioner-Rajan Bhardwaj is also convict in other case of NDPS Act as he was not having any licence to manufacture the drugs and his licence was cancelled. The licence was not renewed because of his conviction in the earlier case. The accused being in custody of the police by virtue of valid remand order, cannot be considered to be in illegal custody. The order of remanding the petitioners to police custody was passed by the competent Court. It is also the argument of learned State counsel that the petition for habeas corpus is not maintainable in case a person is in judicial custody or the custody has been given by the competent Court. The petitioners have suppressed the material facts by stating that no other case is pending against them, whereas, they were convicted in another case. Learned State counsel has also relied upon the judgment of Hon'ble the Apex Court in the cases of **Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and others** 2012 (4) RCR (Criminal) 655, **Saurabh Kumar through his father Vs. Jailor, Koneila Jail and another** 2014 (13) SCC 436 and of this Court in the case of **Braham Singh Vs. State of Haryana and others** 2016 (4) PLR 213, in support of his contentions.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR and other

documents available on the file including the remand order.

On perusal of contents of the FIR, it is apparent that initially the FIR was registered against accused-Karandeep Sharma from whom 40000 loose unlabelled, unmarked and unbilled intoxicant tablets were recovered. On the basis of disclosure statement made by said Karandeep Sharma while in custody of the police on 3.7.2018, Petitioner-Rajiv Bhardwaj and one Bharat Bhushan were nominated as an accused. A joint raid was carried out in the premises of petitioner's company on 3.7.2018 by police and Drugs Authorities and nine loose tablets were alleged to be recovered on 4.7.2018. Bharat Bhushan has been shown to have been arrested on 5.7.2018, whereas, as per case of the petitioners, Bharat Bhushan was taken into illegal custody on 4.7.2018. On 7.7.2018, Bharat Bhushan who was in custody of the police alleged to have made a disclosure statement to the effect that the licence for manufacturing the medicines of the company was in the name of Rajiv Bhardwaj and Rajan Bhardwaj, which was issued by the Drug Control Board, Chandigarh. He also stated that about 14 years ago, intoxicating injections and medicines were recovered from both the petitioners in Haryana and they were granted bail by this Court in that case. In January, 2018, both the brothers sent five and a half quintals of intoxicating powder from their previous residence to some destination in their vehicle and the said vehicle was intercepted and caught at Loharka Road, Amritsar and the said case is still pending against them. The factory was sealed by both the Drug Inspectors, who were accompanying the police party. It was also stated that only Rajiv Bhardwaj and Rajan Bhardwaj were acquainted with the facts as to who supplied them the raw material used in manufacturing of the medicines as all the written

work and billing was done by them only. Accused-Bharat Bhushan also stated that few days earlier to 3.7.2018 both the brothers had manufactured huge quantity of intoxicating tablets and out of those tablets, Rajan Bhardwaj had handed over 40,000 tablets to him to further hand over the same to Karandeep Sharma. When Rajan Bhardwaj and Rajiv Bhardwaj came to know that those intoxicating tablets were recovered from Karandeep Sharma then the boxes containing intoxicant tablets were shifted to store room/godown situated in Ambala. On the basis of aforesaid disclosure statement, petitioner-Rajan Bhardwaj was nominated as accused in the case vide Case Diary No. 5 dated 7.7.2018. Rajan Bhardwaj was shown to be arrested on 8.7.2018, whereas, he was taken in custody on 7.7.2018. The search was carried out by the police and drug authorities in the premises on 10.7.2018 and which resulted into recovery of 12.5 kgs of Tramadol powder. The offences under Sections 25/26/36 of the NDPS Act were added vide diary No. 9 dated 10.7.2018. Offence under Section 201 IPC was added on 4.7.2018 as petitioners had torn the packing of the intoxicating tablets and flushed them in sewerage to destroy the evidence. It is also mentioned in the reply that digital video recording (DVR) of the CCTV cameras installed in the premises of the petitioners' company were removed by the accused-petitioners.

In the remand applications of Karandeep Sharma, Bharat Bhushan and Rajan Bhardwaj, totally a different story has been narrated contrary to the contents of the reply. It has also come on record that in the earlier case, an inspection was carried out on 22.12.2004 and a criminal complaint was filed by the Drug authorities against the petitioners' Company and a dealer at Hisar under the Drugs and Cosmetic Act, 1940. In

the said complaint, one of the principal witness was Sh. Gurbinder Singh, who was the then Drug Inspector posted at Amritsar. Gurbinder Singh had appeared as PW-3, who is now Assistant Drug Controller in the State of Punjab. Both the petitioners were convicted by the Chief Judicial Magistrate, Hisar on 31.1.2014. Aggrieved by the said judgment, both the petitioners filed an appeal, which was also dismissed by Additional Sessions Judge, Hisar vide its judgment dated 17.1.2018. Aforesaid judgments passed by both the Courts below were set aside by this Court vide its judgment dated 8.3.2018 in Crl. Revn. No. 328 of 2018. After release from custody, on 3.5.2018 petitioner-Rajiv Bhardwaj approached the drug authorities and requested for another inspection and renewal of the manufacturing licence. In pursuance of said application, the drug authorities granted permission to manufacture additional drugs formulations as per list attached to the manufacture under the drugs manufacturing license 1133-0SP and 1132-B by imposing certain conditions and issued “no objection certificate” to petitioner's company.

Learned counsel for respondent-State has raised an objection that the accused have no right to seek transfer of the investigation, whereas, in view of the provisions of Article 21 of the Constitution of India a person has a right to seek protection of life and personal liberty in accordance with procedure established by law. The State has a duty to enforce the human rights of the citizens providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek protection, which shall be granted by the State. This view was taken by Hon’ble the Apex Court in the case of **State of West Bengal and**

others Vs. Committee for Protecting of Democratic Rights, West Bengal and others (2010) 3 SCC 571. Similarly, Hon'ble the Apex Court in the case of **Nirmal Singh Kahlon Vs. State of Punjab and others** [2008] INSC 1813 has held that the victim of a crime is equally entitled for fair investigation. The observations made by Hon'ble the Apex Court reads as under:-

“An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. To maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, equally entitled to a fair investigation.”

From the facts as mentioned above, it is apparent that the petitioners, have been implicated only on the basis of disclosure statement made by co-accused-Karandeep Sharma, which is hit by Section 25 of the Indian Evidence Act. Moreover, said disclosure statement made by Karandeep Sharma did not lead any discovery of fact. Even while seeking extension of remand of the petitioner-Rajan Bhardwaj, there was no material with the Court that 12.5 kgs Tramadol powder recovered from the petitioners was not in accordance with the provisions of the NDPS Act as it was purchased against proper/valid invoice and an entry was also made in the stock register. While allowing the remand application, the facts were not verified and the order was passed in a totally mechanical manner. Nothing is on record to connect the petitioners with recovery of these unlabelled and unpacked tablets from a stranger. The licence of manufacturing was valid

uptill 31.12.2017. As per Notification dated 13.7.2018 issued by Central Govt. the provisions of NDPS Act were not attracted to the case of licenced manufacturer till 26.08.2018 and same has not been taken into consideration. In the present case, as per allegations 12.5 kgs of intoxicating powder has been shown to be recovered from the premises of the petitioner's company by the police authority, whereas, as per spot memo prepared by the drug authority on the same day, the recovery effected was Tramadol Powder. Tramadol is not covered under the purview of NDPS Act and as such the whole proceedings conducted on the basis of wrong facts is not in accordance with law. The Court has also not applied its judicious mind while allowing the remand.

It is also relevant to mention that petitioners were convicted in the earlier case by the trial Court on 31.1.2014. Thereafter their appeal was dismissed by the appellate Court on 17.1.2018. They filed Criminal Revision No. 328 of 2018, which was allowed on 8.3.2018 and their conviction was set aside.

Accordingly, I am of the considered view that the matter requires to be investigated by a Special Investigating Team consisting of two members of the rank of ASI headed by an officer of the rank of Superintendent of Police.

Meanwhile, petitioner, namely, Rajan Bhardwaj is directed to be released on interim bail on furnishing bail/surety bonds to the satisfaction of trial Court till conclusion of the investigation by the SIT.

23.10.2018

pooja

(DAYA CHAUDHARY)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes