

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22384 of 2019
Date of Decision:13.09.2019

Darshan Singh
State of Punjab

Versus

....Petitioner
...Respondent

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Parminder Singh Sekhon, Advocate for the petitioner.
Mr. V.G. Jauhar, Sr. DAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 Cr.P.C. seeking bail pending trial in case FIR No. 172 dated 09.08.2018, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') registered at Police Station Bhawanigarh, District Sangrur.

As per allegations of the prosecution, on 09.08.2018 police party headed by ASI Sukhwinder Singh were on patrolling duty in Village Naraingarh, then Smt.Sudha, Drug Inspector, met them and conducted a raid at the shop of petitioner who was asked to show the licence for the medicines kept inside his shop, but failed to produce the same and upon checking, the following contraband was recovered:-

- i. 113 strips x 10 = total 1130 tablets (V.DEP) Alprazolam*
- ii. 20 strips x 10= 200 tablets Cloazem*
- iii. 10 strips x 10= 100 tablets of PRAM 0.5 Alprazolam*
- iv. 20 strips x 10= 200 tablet of WINAM-0.1 Cloazepam*
- v. 35 Tramodex injections (Tramadol Hydrochloride)*
- Total 1630 tablets + 35 injections and and currency notes of Rs. 35120/-*

It is contended on behalf of the petitioner that he is a qualified Doctor in Ayurvedic and Yunani Medicines and as such entitled to possess the alleged allopathic medicines recovered from his shop being manufactured drug under the Drug and Cosmetics Act, 1940, for short 'Act of 1940'. Also contends that he purchased the stock through valid bills attached with the paper-book and even a resolution was passed by the Gram Panchayat to the effect that petitioner was having a very good reputation in the village and running his Medical shop-cum-Clinic.

On the other hand, learned State counsel has opposed the prayer and submitted that petitioner is not entitled to keep the contraband being a Ayurvedic Doctor and recovery is commercial in nature. Further submitted that report under Section 173 Cr.P.C. has already been submitted and even charges have also been framed, thus, he is not entitled for bail pending trial.

Heard both sides and perused the paper book.

Recovery in the present case is not disputed by the petitioner but his contention is that he purchased the contraband through valid bills from the wholesale dealer and being a registered medical practitioner, cannot be prosecuted under the provisions of the Act. Concededly, petitioner is having the qualification of Ayurvedacharya (B.A.M.S.) from B.R. Ambedkar Bihar University, Muzaffarpur (Nitishwar Ayurved Medical College, Muzaffarpur) and was issued a registration certificate by the competent authority under the provisions of *The Punjab Ayurvedic and Unani Practitioners Act, 1963*, to practise as a "Ayurvedic" practitioner and the same is valid upto 30.09.2020. Also necessary to mention here that petitioner is duly registered with the Central Council of Indian Medicine,

Ministry of Ayush, Government of India, New Delhi, under the provisions of Indian Medicine Central Council Act, 1970, for short IMCC Act, 1970, w.e.f. 11.06.2016. Even, certain Bills have also been produced by the petitioner to show the purchase of alleged contraband, but despite repeated query of this Court, learned counsel for the petitioner has failed to show any licence issued in his favour under Punjab Narcotic Drugs and Psychotropic Substance Rules, 2012, for short '2012 Rules'.

Section 8 of the Act, inter-alia says that no person shall possess, sell or purchase any narcotic drugs or psychotropic substance except for medical or scientific purposes 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 authorization in accordance with the terms and conditions of such licence, permit or authorization. Still further, sub-rule 4, rule 24 of 2012 Rules, envisages that a Medical Practitioner or a Medical Institution wishing to possess or dispense the manufactured drugs for use in practice, shall get registered on an application made to the Drugs Controller or the Director, Ayurveda, Punjab, as the case may be, along with such fee as may be notified by the Government from time to time. This sub-rule further says that full particulars of such registration shall be maintained in a register in Form No. ND-6 and the Drugs Controller or the Director Ayurveda, Punjab, shall, immediately after the registration of the Medical Practitioner or a Medical Institution, issue a 'Registration Certificate' in Form No. ND-7 which shall be produced on demand by the inspector for inspection.

Since the petitioner has failed to produce the requisite licence in terms of 2012 Rules, thus, in the opinion of this Court, there is no escape route for him except to face the prosecution for committing an offence under Section 22 of the Act.

Admittedly, FSL report in this case has already been received and the contraband recovered from the petitioner is Alprazolam which duly finds mention at Sr. No.30 of the Schedule attached under the Act in the list of psychotropic substances. Thus, in view of the provisions of Section 80 of the Act, he is rightly being tried before Learned Special Court. Concededly, charges have been framed against the petitioner under Section 22 of the Act; now the case is fixed for prosecution evidence.

The recovery in this case is commercial in nature, thus in view of the Bar contained in Section 37 of the Act, no ground is made out to release the petitioner on bail pending trial and the present petition is hereby dismissed.

The above observations, may not be construed as an expression of opinion on merits of the case.

Keeping in view the fact that the petitioner is in custody since 09.08.2018, learned trial Court is requested to expedite the trial, if there is no legal impediment.

[MAHABIR SINGH SINDHU]
JUDGE

September 13, 2019
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Whether speaking/reasoned	yes/no
Whether reportable?	yes/no