

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
202/2 (PROCEEDINGS THROUGH V.C.)

**CRM-M-44719-2019 &
CRM-21190-2020 &
CRM-21191-2020 &
CRM-21192-2020 &
CRM-21248-2020 &
CRM-23883-2020 &
CRM-23884-2020**

Date of decision: 23.09.2020

Abhishek Sharma

...PETITIONER

V/S

Union of India, Narcotics Control Bureau, Chandigarh

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vishal Deep Goyal, Advocate,
for the petitioner.

Mr. Rajiv Sharma, Senior Central Govt. Counsel,
for the respondent/NCB, Chandigarh.

AUGUSTINE GEORGE MASIH, J.

CRM-21190-2020

C.M. is allowed subject to just exceptions. Filing of Court fee as well as attestation of affidavits by the Oath Commissioner is dispensed with.

CRM-21191-2020

C.M. is allowed subject to just exceptions. Filing of certified copies/true translation/true copies of Annexures R/1 & R/2 is dispensed with.

CRM-21192-2020

C.M. is allowed subject to just exceptions. Reply and documents/annexures on behalf of respondent is taken on record.

CRM-23883-2020

C.M. is allowed subject to just exceptions. Filing of Court fee as well as attestation of affidavits by the Oath Commissioner is dispensed with.

CRM-23884-2020

C.M. is allowed subject to just exceptions. Synopsis on behalf of the respondent is taken on record.

CRM-M-44719-2019

Prayer in this petition is for grant of regular bail to the petitioner in Criminal Case No. 23 dated 06.05.2019 under Sections 8/22/29 & 60 of the NDPS Act, 1985 registered in Police Station at Narcotics Control Bureau (NCB), Chandigarh.

It is the contention of the learned counsel for the petitioner that the petitioner has been falsely implicated in this case and that too, on the basis of the statement of the co-accused. The factual position is that the petitioner is running a medical store in the name and style of M/s Goodwill Pharmaceuticals at Denso Chowk, Mahavir Vihar Colony, Rawali Mehdood, Bahadrabad, Haridwar having two drug licenses valid from 18.12.2018 to 17.12.2023 (Annexure P-2). The medicines, which have been recovered from the petitioner, are purchased by the petitioner's firm from M/s Nutec Healthcare Pvt. Ltd., Delhi and M/s Otis Healthcare, New Delhi on valid bills through E-Way Bill System. These medicines were sold on valid bill to M/s Fairdeal Pharmaceuticals at Haridwar,

Uttarakhand. Petitioner had provided all the relevant documents to the Narcotics Control Bureau (hereinafter referred to as 'NCB') Team. Despite that, the petitioner has been arrested. It is asserted that the petitioner has valid bills as per the provisions of Drugs and Cosmetics Act, 1940 and Rules 1945 and is maintaining all the records as per law. Since the petitioner has a valid license under the Drugs and Cosmetics Act, 1940, therefore, no offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') is made out against the petitioner. Prayer has, thus, been made that the petitioner be granted the concession of bail.

On the other hand, learned counsel for the NCB has submitted that as per the investigation, petitioner is the main person. The modus operandi of the accused petitioner is that he purchased capsules and tablets of Tramadol Hydrochloride from manufacturers and thereafter, sold in the open market through Gurpreet Singh, Amit Uppal, Jasveer Singh, Shubham Bhalla, Baljeet Singh and Harpreet Singh, the co-accused. Petitioner had got registered M/s Goodwill Pharmaceuticals in his name and one Sandeep Kumar had got registered Fairdeal Pharmaceuticals in his name. This Fairdeal Pharmaceuticals is also showing the name of one Jaswinder Singh. Abhishek Sharma-petitioner, Sandeep Kumar and Jaswinder Singh Grewal initially had given the same address i.e. Barrier No. 6, Jamalpur Khurd, Bahadrabad, Tehsil and District Haridwar which building has been given on rent by one Ghanshayam Singh. Subsequently, they changed their addresses as payment of GST created certain problems. Gurpreet Singh is stated to be a proprietor of Big View Medical Agency and has given experience certificate to both Abhishek Sharma and the co-accused Jaswinder Singh.

The co-accused Jaswinder Singh had made a statement under Section 67 of the NDPS Act that he had given his signed Cheque Book to petitioner Abhishek Sharma and the billing for his firm i.e. Fairdeal Pharmaceuticals was done by Abhishek Sharma and Gurpreet Singh. There is a deep-rooted conspiracy between the petitioner Abhishek Sharma and the co-accused.

The recovery, which has been effected from the petitioner, is 46,400 capsules and 50,000 tablets of Tramadol Hydrochloride whereas from the other co-accused, it comes to 20,000 capsules of Tramadol Hydrochloride and 1,00,000 tablets of Tramadol Hydrochloride. The total recovery, therefore, is of 2,16,400 tablets/capsules in the case. The evidence has been collected by the NCB Team, which indicates that the petitioner is the kingpin and had been selling the narcotic drugs in the open market through the co-accused and at times, without any bills. Apart from the statement of the co-accused as recorded under Section 67 of the NDPS Act, petitioner himself has also joined investigation and given a statement under Section 67 of the NDPS Act. In the disclosure statement, he mentioned that he met Gurpreet Singh, the co-accused, in November, 2018 when both of them decided to start wholesale business of medicine including medicine containing Tramadol. They took on rent shops in Haridwar. Then they approached the Drug Licensing Authority and obtained license in the name of M/s Fairdeal Pharmaceuticals which is in the name of the petitioner Abhishek Sharma.

On the basis of the evidence, which has been collected by the NCB Team and the challan presented, counsel for the NCB submits that the petitioner does not deserve the concession of bail especially in the light of the provisions of Section 37 of the NDPS Act when commercial quantity of

the narcotic is recovered.

As regards the claim of the petitioner that he is having a valid license under the Drugs and Cosmetics Act, 1940, it is asserted that the said license has not only been misused but has been illegally utilized for ulterior motive. The recovery, which has been effected from the petitioner, is unaccounted especially in the light of the statement of the co-accused and the recovery effected from them. Prayer has, thus, been made for dismissal of the present petition.

Having considered the submissions made by the counsel for the parties and on going through the pleadings, the contentions of the counsel for the petitioner cannot be accepted.

Petitioner may have a valid license under the Drugs and Cosmetics Act, 1940 but that does not mean that in case of violation of the provisions of the NDPS Act, the petitioner cannot be booked under the same especially when the petitioner has not been able to explain the recoveries, which have been effected from him. His involvement in illegal drug trade stands substantiated in the light of the statement of the co-accused recorded under Section 67 of the NDPS Act which is duly supported by the recoveries effected from them and the petitioner. The evidence, which has been collected by the prosecution, prima facie, indicates the involvement of the petitioner in the commission of the offence.

The recovery, which has been effected from the petitioner, is admittedly commercial and, therefore, the rigors of Section 37 of the NDPS Act stands attracted. Keeping in view the provisions of Section 37 of the NDPS Act, 1985, this Court is not satisfied that there are reasonable

grounds to believe that the petitioner is not guilty of any offence which is alleged to have been committed by him.

In view of the above, the present petition stands dismissed.

CRM-21248-2020

In the light of the dismissal of the main petition, the present application has been rendered infructuous and the same is disposed of as such.

September 23, 2020
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No