

Sr.No.211

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

**CRM-M-55870-2018(O&M)
Date of decision:27.02.2020**

Dr. Mandeep Singh

....Petitioner

versus

State of Punjab

.....Respondent

Deepak Kanaujia and others

CRM-M-17312-2019(O&M)

... Petitioner(s)

versus

State of Punjab

... Respondent (s)

Coram: Hon'ble Mr. Justice Jasgurpreet Singh Puri

Present: Mr. R.S.Rai, Sr. Advocate with
Mr. Raminder Singh, Advocate,
Mr. Karanjot Singh, Advocate,
Ms. Rubina, Advocate and
Mr. Piyush Gupta, Advocate
for the petitioners.

Mr. Ajay Pal Singh Gill, AAG, Punjab.

Jasgurpreet Singh Puri, J.(Oral)

This order shall dispose of two petitions bearing CRM-M-55870-2019 and CRM-M-17312-2019.

CRM-M-55870-2019 petition has been filed by one Dr. Mandeep Singh under Section 439 Cr.P.C for grant of regular bail in FIR No.167 dated 01.09.2018 registered under Sections 22 & 25 of the Narcotic Drugs and Psychotropic Substances Act No.61 of 1985 at Police Station City Phagwara, District Kapurthala.

As per FIR which has been annexed as Annexure P-1, the allegations made in the FIR are that on information of a special informer the premises of the petitioner who is having a factory of medicines at Banga road, Phagwara was raided and heavy quantity of intoxicating medicines were apprehended. At that point of time, even Drug Inspector had come on the spot and an FIR under Sections 22 & 25 of NDPS Act was registered against the petitioner. Thereafter, investigation was carried out and the petitioner was apprehended on 01.09.2018, till then he is in custody. The petitioner had earlier filed bail application before the learned Special Judge wherein it was declined basically on the ground that there was a huge recovery of intoxicating substance and therefore, in view of the seriousness of the matter, the bail application was declined. Thereafter, the petitioner has moved the present application under Section 439 Cr.P.C before this Court.

Shri R.S.Rai, Sr.Advocate assisted by Mr. Raminder Singh, Advocate has submitted that the petitioner is a qualified doctor and is in the trade of manufacturing of psychotropic drugs which are required for the use of medicines and for that purpose he is holding a valid license which has been annexed with this petition as Annexure P-5 and the license is valid from October 2003 to 06.08.2022 and list of those substances are also listed in the license. A perusal of the license would show that license has been renewed till 06.08.2022. He has further submitted that the substance which was recovered from his factory premises was manufactured under a valid license and in case there was any marginal difference with regard to the stock which was shown in the stock register and the physical verification then that was only because of the error which might be between the

weighing scale which is weighed by way of manual method and by way of digital weighing machine. He has further argued that in any case the confiscating material was not narcotic but it was only a psychotropic drug which he is manufacturing under a license and therefore, no offence was made out even as per the FIR. Learned Senior counsel has also relied upon Rules 64, 65-A and 66 of the Narcotic Drugs and Psychotropic Substance Rules 1985 which are reproduced as under:-

“As per Rule 64, the license for manufacture of psychotropic substances and its preparations is only required under the Drugs and Cosmetics Rules 1945 under the Drugs and Cosmetics Act, 1940.

As per Rule 65-A, even the sale and purchase is by way of a license granted under the Drugs and Cosmetics Rules 1945.

As per the Rule 66, the possession is also covered by way of license granted under the Drugs and Cosmetics Rules 1945.”

Learned Senior counsel has further stated that as of date the license vide Annexure P-5 is still in operation and entire manufacturing record including the Stock Register, manufacturing record of different tablets including the raw material used, certificate of analysis, test report, batch production record shows that there was no anomaly whatsoever in the manufacture as well as record maintained by the company owned by the petitioner, namely, M/s Long Life Pharmaceuticals. He has further relied upon Annexure P-7 to show that returns of the different preparation of drugs filed with the competent authorities including the Narcotics Control Bureau

of India showing complete accountability of the said drugs as mandated under the Act. He has further referred to Annexure P-8 to show various invoices/purchase bills/sale bills while complying with Form No.6 as per Rule 67 of NDPS Rules of the said drugs/substances obtained from concerned manufactures of the said drugs. Further reliance has been placed upon Annexure P-9 to show that Inspection Reports of the Drugs Inspector from time to time shows complete accountability of the use and manufacture of the said material which according to learned counsel for the petitioner is controlled and regulated by the Drugs Department of Punjab under the concerned Drugs Inspector of the Area. He has further stated that there have been periodic checks by the concerned officials of the Drugs Department not only before granting renewal of the licenses but even thereafter also. He has further stated that all the above stated invoices have also been verified by the Drugs Inspector. Therefore, he has stated that the manufacturing of the drugs was perfectly legal and in accordance with law and variation in the Stock Register and the Physical Stock upto marginal extent would not invite any penal consequences and would not fall under the penal provisions or either under the NDPS Act or under the Drugs and Cosmetics Act.

Learned Senior Counsel has drawn my attention to the orders dated 21.12.2018 passed by this Court in which the learned State counsel sought time to verify as to whether only psychotropic substance was found from the spot or not. He has further drawn my attention to the order dated 15.01.2019 passed by this Court wherein it was observed that affidavit of Sandeep Kumar Malik, Assistant Superintendent of Police, Phagwara was filed in Court and it is recorded in the affidavit that license of the petitioner

has been verified and it has been found to be genuine and as per verification, license to manufacture the drugs is found to be genuine. However, the question still remains as to whether the quantity of psychotropic substance recovered from the factory of the petitioner tallies with the Stock Register or not. He has further stated that in view of this order dated 15.01.2019 so far as the license to manufacture is concerned, it remains undisputed in view of the affidavit filed by the Assistant Superintendent of Police, Phagwara. However, the scope of the controversy was narrowed down only to the extent of tallying of the quantity with the Stock Register. Thereafter, he has referred to the Order dated 18.01.2019 passed by this Court wherein it was observed that the affidavit of Sandeep Kumar Malik, IPS Assistant Superintendent of Police, Phagwara was filed in the Court and it is stated in the affidavit that the Stock has been checked with the help of Drug Control Officer, Kapurthala and that they have checked the quantity recovered which tallies with the Stock Register but some discrepancies have been found. However, since it was stated in the Court that the discrepancy if any were due to difference in the weighing machines i.e. electronic machine and ordinary scale and therefore, such difference can not be considered for the purpose arriving at a conclusion that excessive drugs have been found from the premises of the petitioner. Request was made at that point of time before the Court for again weighing the material in the presence of the representative of the petitioner, Drug Controller and the Assistant Superintendent of Police. Thereafter, this Court had directed that fresh report be filed by way of affidavit of the aforesaid Sandeep Kumar Malik, IPS, Assistant Superintendent of Police, Phagwara. Thereafter, an affidavit was filed by Sandeep Kumar Malik on

22.01.2019 in which chart was attached as Annexure R-1 as a Spot Memo which shows that there was not much difference in the recovery of the tablets as per the Stock Register maintained by the petitioner and there were a minor difference in the weight of powder recovered and the powder as per stock register. Learned counsel has further pointed out from the afore-stated chart that six items have been provided in the chart out of which it showed that the excessive tablets with regard to five entries made was 'nil' and it was only pertaining to one entry at item no.1 and only little difference of tablets i.e. 74 tablets were found and +52 gms of Alprazolam was found which is a very nominal.

Thereafter, learned Senior Counsel has drawn my attention to the order dated 23.01.2019 passed by this Court in which some difference was shown in the earlier Spot Memo. It was directed that again the substances will be weighed with the help of electronic weighing machine in the presence of learned Chief Judicial Magistrate or the Magistrate concerned. Therefore, this Court had directed re-weighment and fresh report regarding the powder be prepared and submitted to this Court. Thereafter, on 27/28.01.2019 an affidavit was filed by Sandeep Kumar Malik, Assistant Superintendent of Police, Phagwara in which the aforesaid deponent attached the Spot Memo which was prepared in the presence of the learned Chief Judicial Magistrate and the Drugs Controller, Kapurthala. This Spot Memo which was attached with the affidavit was also supplied by the learned Chief Judicial Magistrate directly to this Court which is also a part of the paper book.

Learned Senior Counsel submits that as per the aforesaid Spot Memo, 6 items have been provided wherein perusal of the same would show

that even on the re-weighing in the presence of the learned Chief Judicial Magistrate the difference comes to be extremely nominal. These 6 items pertain only to powder which was weighed by way of digital weighing machine and Alprazolam was found to be in excess of +50 gms, Diazepam white +49 gms, Diazepam Pink -14 gms, Zolpidem +54 gms, Clonazepam -12.5, Lorazepam +31 gms. Out of six items, two have been shown to be -ve and four have been shown to be +ve and that only to a nominal quantity which is absolutely negligible because such a variation can always be there even at the time when re-weighment is done from time to time.

Learned counsel for the petitioner has further argued that the petitioner is in custody since 01.09.2018 and he was arrested in view of the basic contents which were contained in the FIR which reflected that huge quantity of psychotropic and narcotic substances were recovered from the premises of the factory of the petitioner, therefore, he was arrested. However, during the pendency of the present petition detailed verifications have been made not only once but repeatedly the said verifications have been made in pursuance of the orders passed by this Court and ultimately the entire subject matter of the controversy came down to the Spot Memo which was prepared in the presence of the learned Chief Judicial Magistrate and which was of extremely negligible difference between the stock verification and the re-weighment measurements. He further states that even otherwise also, if the measurement was to be done by way of manual system and then probably such kind of marginal and negligible measurements may again take place and therefore, he states that in view of the long incarceration of the present petitioner, he may be admitted to bail.

Apart from the above, he has submitted that even otherwise

also no case is made out under the provisions of NDPS Act in the present case because the said controversy has now narrowed down and pertain to psychotropic substances regarding which he has valid license which he uses for manufacturing the same.

Learned Senior Counsel on specific instructions from the petitioner has stated that the petitioner is not involved in any other case and therefore, he has prayed for the grant of regular bail.

Per contra, learned State counsel on instructions from SI Balwinder Singh has submitted that it is a case wherein the premises of the petitioner were raided and the substances were found from the spot. So far as the custody period of the petitioner is concerned learned State counsel has not disputed the same. So far as the involvement of the petitioner in other cases is concerned, learned State counsel has also not disputed the same. So far as the narrowing down of the subject matter of the case only to the extent of the Spot Memo prepared under the supervision of the learned Chief Judicial Magistrate is concerned, he has also not controverted the same and he has submitted on instructions that subject matter of the case would now pertain only to the substances which have been mentioned as powder in the Spot Memo as aforesaid. However, learned State counsel states that although the investigation in the case has been completed, challan was presented on 26.02.2019 but the charges have not been framed, therefore, he has opposed the grant of the bail to the petitioner.

I have heard the learned counsel for the parties in detail and also perused the record made available on the basis of the paper-book.

Some of the undisputed facts in the present case are that the petitioner is admittedly in custody since 01.09.2018 and after investigation

of the case, challan has been presented on 26.02.2019 which is more than a year today but the charges have not been framed as of today. It is also not disputed that the petitioner is not involved in any other case. It is also not disputed that the petitioner was the owner of a factory which was manufacturing various kinds of drugs which were used for medicinal purposes under the valid license from the concerned Drugs and Control Department. It is also not in dispute that the said license was operative at the time when the FIR was registered and it is still in operation till the year 2022. It is still not disputed that various periodic checks were made before the grant of the license and after the grant of the license. In pursuance of the orders passed by this Court whereby it was directed that the re-weighment will be done under the supervision of learned Chief Judicial Magistrate, the said checking was made even in the presence of the Drugs Control Officer wherein out of six items which have been mentioned in the Spot Memo two have been found to be -ve and four have found to be +ve. A bare perusal of the same would show the excess which has been mentioned here. So far as powder of Alprazolam is concerned it is just +50 gm, Diazepam white is +49 gm, Zolpidem is +54 gm and Lorazepam is +31 gm. The contention which has been raised by the learned Senior Counsel that such discrepancy if any would be only with regard to the weighing of the substance which can vary not only from time to time in view of the content which may be included in that but also in view of the fact that different weighing scales can give variable results especially when they are weighed from the manual weighing machine and the digital machine.

As present case pertains only for the consideration for grant of bail, this Court would not go into the merits by appreciating the entire

evidence but only for the purpose of grant of bail to the petitioner, various other factors are also to be seen apart from the above which have been mentioned. The petitioner is in custody since 01.09.2018 and the challan was presented in the present case on 26.02.2019 after the completion of investigation but the learned State counsel has not been able to justify as to why even after more than one year the charges have not been framed as yet. It is not a case of the State that in case the petitioner is released upon bail then there is any likelihood that he will tamper with any evidence or he may influence any witness or he may repeat offence and particularly, in view of the fact that during the pendency of the case, the weight has already been reweighed under the supervision of the learned Chief Judicial Magistrate.

So far as petitioners in CRM-M-17312-2019 is concerned, this petition has been filed by four employees of the Company, namely, M/s Long Life Pharmaceuticals which is owned by Dr. Mandeep Singh, who is the petitioner in CRM-M-55870-2018.

Learned Senior Counsel for the petitioners has stated that the present petitioners are only employees of the company and they have nothing to do with the ownership of the company nor do they have anything to do with the management of the company, therefore, they have been wrongly roped in the present FIR. He has further submitted that these employees are not involved in any other case and therefore, he has prayed for grant of their regular bail.

On the other hand, learned State counsel has very fairly stated that it is correct that these are only employees of the aforesaid company and they are not involved in any other case. Therefore, State has not opposed the parity with regard to grant of bail.

In view the above facts, the above mentioned petitions bearing CRM-M-55870-2019 and CRM-M-17312-2019 are allowed. After considering the totality of the circumstances of the cases, this Court is of the considered opinion that it would be in the interest of justice, to admit the petitioners to bail. Petitioners are granted the concession of regular bail. They be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the concerned Trial Court/Duty Magistrate.

However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant only for the purpose of decision of present petition.

27th February, 2020
Shivani Kaushik

[JASGURPREET SINGH PURI]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*