

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

105

CRM-M No.801 of 2021

Date of decision:20.05.2021

Subhash Kumar

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Ms.Monita Mehta, Advocate for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

The Court has been convened through video conferencing due to Covid-19 pandemic.

CRM-13679-2021

For the reasons given in the application, it is allowed.

The hearing of the main case is preponed to today and is ordered to be taken on Board for hearing today itself.

CRM-8445-2021

Application is allowed.

Medical record of the petitioner is taken on record as Annexure P-11.

Main Case

This is the second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.164, dated 30.11.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act (for short - "the NDPS Act"), 1985, registered at Police Station Mahilpur, District Hoshiarpur, Annexure P-1.

FIR, Annexure P-1, came to be lodged after the premises of M/s Gautam Medical Store were raided on the basis of secret information and varied tablets and capsules were recovered which were taken into possession by the raiding party.

Counsel for the petitioner has urged that the petitioner is a licensed chemist and after raiding his premises, an inspection report was prepared which was sent to the Drug Controller, Hoshiarpur to determine as to whether the petitioner has violated the provisions of NDPS Act and Drugs and Cosmetics Act, 1914. By referring to the affidavit of Deputy Superintendent of Police, Sub Division Garhshankar, District Hoshiarpur filed in response to the first petition seeking bail (CRM-M-3669-2020) instituted by the petitioner, she submits that the Drug Controller reported as under:-

“In response of the said letter, the Drug Control Officer, Hoshiarpur vide letter Number/Drugs/2020/2014, dated 11-09-2020 to the SHO, PS Mahilpur stated that the Firm M/s Gautam Medical Hall, Phagwara Road, Mahilpur District Hoshiarpur has license No.131284, 131285, valid upto 11-03-2023 for selling wholesale medicine and also has license No.122630 and 122631 valid upto 31-12-2022 for selling medicine on retail basis. It is submitted that Tablet Clevidol 100 SR, Tab-Digidol and Capsules Foridol is having Tramadol HCL Salt according to FSL report No.5038/2019/Toxi./ FSL/Punjab, dated 13-03-2020, which has been banned by Commissioner FDA Punjab on 29-07-2019 vide letter No.PA/CFDA/658 to keep and to sell by the chemist. M/s Gautam Medical Hall, Phagwara Road, Mahilpur has not been given permission to stock or sell Tramadol HCL salt by the

FDA department. The Chemist can purchase and sell Tab-Alpranof 0.5, Tab-Prozalam (0.5) tab Ativan 2 mg and Tab Ativan 2 mg and Tab-Librex which is having salt of Alprazolam, Lorazepam and Chlordiazepoxide respectively as per Section 65-A, 66 of NDPS Rules on the basis of valid drug license.”

She has referred to the medical record of the petitioner, Annexure P-11, and argued that the petitioner is a known patient of hypertension and hypothyroidism for the last many years. He is also suffering from Asthma and is on inhalers. As such, his medical condition is such that he is highly susceptible to coronavirus. She urges that after the dismissal of the first petition for grant of bail on 01.10.2020, charge has been framed on 11.02.2021 and only one out of 09 prosecution witnesses has been examined but due to the restricted functioning of the Courts, the trial has come to a stand-still. She has prayed that the petitioner, who is 51 years old and is in custody since 30.11.2019 and has clean antecedents deserves to be enlarged on bail particularly in view of his health condition.

State counsel upon instructions from ASI Dilbagh Singh has opposed the petition and submitted that the contraband recovered from the petitioner falls within the ambit of commercial quantity and rigour of Section 37 of the NDPS Act is attracted. In compliance of order passed by this Court, he has filed the health status report of the petitioner by way of affidavit of Deputy Superintendent Central Jail, Hoshiarpur and custody certificate dated 19.05.2021, which are taken on record.

I have considered the rival submissions of the counsel for the parties.

The health status of the petitioner, Annexure R-2, sent by the Medical Officer, Central Jail Hospital, Hoshiarpur, appended with the affidavit, reads as under :-

“Respected Sir,

As per record, the above mentioned for last 03 yrs patient is a known case of Hypertension and Hypothyroidism for last 01 year and 2 months Yrs. He is on regular medication for these health conditions. Apart from these health conditions the patient is also suffering from Allergic Asthma for which Patient is on inhaled bronchodilators.

The patient is under regular follow up at Central Jail Hospital Hoshiarpur vide health card No.98. His general condition is under observation.

Vitals:-

Blood pressure-190/100 mm hg

Pulse – 82/min

Tafeb sp 98%

The above information is as per the medical records available room of jail Hospital Hoshiarpur.”

An examination of the health certificate of the petitioner shows that he has severe health issues. The U.S. Centres for Disease Control and Prevention (CDC) has advised that persons with moderate to severe or uncontrolled asthma to protect themselves as they are more likely to be hospitalized from Covid-19. It is, therefore, apparent that the petitioner has comorbidities and is vulnerable to the virus. His retention behind bars may not be in the best interest of his health.

Keeping in view his precarious health condition, period of incarceration of almost one year and six months, the nature of

allegations, gravity of offence, and the fact that the trial is likely to take time to conclude due to resurgence of the contagion, no purpose would be served by keeping the petitioner behind bars any further.

Without commenting anything on the merits of the case, the petition is allowed and the petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

20.05.2021

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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No