

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th November, 2021

IN THE MATTER OF:

+ BAIL APPLN. 1983/2021

MOHAN KUMAR JHA Petitioner

Through Mr. Ratnesh Kant, Advocate

versus

STATE OF NCT OF DELHI Respondent

Through Mr. Amit Chadha, APP for the State
with SI Kamal Kumar with ASI
Gulab Singh, PS Crime Branch

+ BAIL APPLN. 3268/2021

MOHD. SHOIAB KHAN Petitioner

Through Mr. Aditya Aggarwal, Mr. Ankit
Mutreja and Mr. Shubham Aggarwal,
Advocates

versus

STATE OF NCT OF DELHI Respondent

Through Mr. Amit Chadha, APP for the State
with SI Kamal Kumar with ASI
Gulab Singh, PS Crime Branch

+ BAIL APPLN. 2497/2021 & CRL.M.(BAIL) 935/2021

PUSHKAR CHANDRAKANT PAKHALE Petitioner

Through Mr. Sandeep Deshmukh, Mr. Nishant
Sharma, Advocates

versus

STATE (NCT OF DELHI)

..... Respondent

Through

Mr. Amit Chadha, APP for the State
with SI Kamal Kumar with ASI
Gulab Singh, PS Crime Branch

+ BAIL APPLN. 3346/2021 & CRL.M.(BAIL) 1217/2021

ADITYA GAUTAM

..... Petitioner

Through

Mr. Pradeep Rana, Mr. Abhishek
Rana, Mr. Ankit Rana, Mr. Nitish
Pande, Advocates

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through

Mr. Amit Chadha, APP for the State
with SI Kamal Kumar with ASI
Gulab Singh, PS Crime Branch

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J

1. These petitions under Section 439 Cr.P.C have been filed for grant of bail to the petitioners in FIR No.70/2021 dated 23.04.2021, registered at Police Station Crime Branch, Delhi for the offences punishable under Sections 420/188/120B/34 IPC and Sections 3/7 of the Essential Commodities Act and Section 3 of the Epidemic Disease Act. All the said petitions have a common prayer, i.e. to enlarge the accused persons on regular bail.
2. The facts, in brief, leading to the filing of the instant petitions are as under:

- a) Briefly summarised allegations in the FIR No.70/2021 are that during the second wave of COVID-19 in the month of April 2021, the Duty Officer, PS Crime Branch, Delhi received inputs of the illegal holding and supply of life saving medication to treat COVID-19. On receipt of a secret tip at 02:00 PM, the Assistant Sub-Inspector, PS Crime Branch was informed that Remdesivir injections, a drug which was in high demand and less supply to treat COVID-19, were going to be unauthorizedly handed over by two individuals, namely, Mohan Kumar Jha (petitioner in BAIL APPLN. 1983/2021) and Mohd. Shoiab Khan (petitioner in BAIL APPLN. 3268/2021) near Batra Hospital, M.B. Road, Sangam Vihar, Delhi on the evening of 23.04.2021, and they would be travelling on a light yellow colour scooty bearing registration No. DL7SCE0534. Acting on the secret tip, the ASI reached near Batra Hospital around 05:15 PM and made arrangements to barricade the roads near Batra Hospital and assembled a team with two private cars, laptop, printer, IO kit bag, entry register along with a secret informer. The ASI tried to convince the passersby to become independent witnesses but everyone declined justifying their own problems. At around 07:00 PM, a light yellow colour scooty bearing registration No. DL7SCE0534 was spotted near the Batra hospital on which two persons were travelling, the accused - Mohd. Shoiab Khan (petitioner in BAIL APPLN. 3268/2021) was riding the scooty and accused - Mohan Kumar Jha was the pillion rider. The secret informer indicated to the

ASI that they were the two persons who were unauthorizedly going to supply the Remdesivir injections near the Batra Hospital. On getting the signal, the ASI apprehended both the accused persons - Mohan Kumar Jha and Mohd. Shoiab Khan, and on frisking them a white colour bag was seized from the accused - Mohan Kumar Jha in which about 10 vials of Remdesivir injections were found. When asked as to where from they procured the Remdesivir injections and for the doctor's prescription, licence or any other bill that could substantiate its possession with them, both the accused were unable to provide any satisfactory answers. On further questioning, it was revealed that the accused persons had purchased these vials of Remdesivir to sell it on a higher margin to the desperate family members of patients ailing from COVID-19. Both the accused persons - Mohan Kumar Jha and Mohd. Shoiab Khan were arrested on 23.04.2021 and taken into custody, and their mobile phones were seized.

- b) During investigation, the CDRs of the arrested accused persons were analysed and a number of Whatsapp chats were seen which showed involvement of other accused persons, who were supplying presumably spurious and adulterated Remdesivir injections. Accused – Mohan Kumar Jha was remanded to police custody on 25.04.2021 where he revealed that he procured 150 Remdesivir injections at the cost of Rs.15,000/- per injection from accused - Pushkar Chandrakant Pakhale (petitioner in BAIL APPLN. 2497/2021). Accused - Mohd.

Shoiab Khan was remanded to police custody on 25.04.2021 and while in custody he revealed that he procured 150 Remdesivir injections at the cost of Rs.15,000/- per injection from the accused - Pushkar Chandrakant Pakhale and one – Manish Goyal. On the revelations made by both the accused persons - Mohan Kumar Jha and Mohd. Shoiab Khan, the accused - Pushkar Chandrakant Pakhale was arrested and taken into custody on 25.04.2021.

- c) During the interrogation, the accused - Pushkar Chandrakant Pakhale disclosed that he purchased 200 Remdesivir injections at the cost of Rs.10,000/- per injection from one – Arun Sharma and Vinay Pathak on 21.04.2021, and purchased another 50 Remdesivir injections at the cost of Rs.10,000/- per injection from one – Sadhna, a native of Haridwar, Uttarakhand, residing at Yamuna Vihar, New Delhi. The accused - Pushkar Chandrakant Pakhale was remanded for three (3) days' police custody, and during the remand period, he further disclosed the involvement of one – Vatan Kumar Saini. The interrogation of accused - Pushkar Chandrakant Pakhale led to the arrest of accused – Sadhna from Yamuna Vihar, New Delhi and in her possession about 160 Remdesivir injections were recovered and she was taken into police custody. During further investigation of accused - Pushkar Chandrakant Pakhale led to the arrest of accused - Vatan Kumar Saini from Haridwar, Uttarakhand and a recovery of empty vials, vials caps and batch coding machine

appearing to be used for the production of fake/forged Remdesivir Injection labels.

- d) During the interrogation of accused - Vatan Kumar Saini, he revealed that he sourced several injections from the accused – Aditya Gautam (petitioner herein in BAIL APPLN. 3346/2021). It was also revealed during the interrogation that through via media, the accused - Aditya Gautam got in contact with the accused persons - Pushkar Chandrakant Pakhale and Sadhna.
- e) The accused - Aditya Gautam was arrested on 27.04.2021 near Meerut, U.P. and in his possession, 16 Remdesivir injections were recovered from his Scorpio car bearing No. UK 07 DT 8388. On enquiring as to where he got the vials from, he neither could provide a satisfactory answer nor he could produce any legitimate document to justify the possession.
- f) Charge-sheet in the present case has been filed. The charge-sheet delineates the role of each of the petitioners present before this Court and states that there is ample evidence in the form of CDRs and WhatsApp chats against the petitioners to demonstrate the petitioners' involvement in supplying fake injections to the needy patients and their family members during the time of critical healthcare crisis. The charge-sheet also mentions of persons who had purchased the Remdesivir injections for their family members. The statements of those people have also been recorded under Section 161 Cr.P.C. The Charge-sheet states that the statements of victims match with the disclosure statements given by the petitioner. It is further

mentioned in the charge-sheet that the statements are further corroborated by the CDRs of the petitioners and private WhatsApp chats between the petitioners. It is further mentioned in the Charge-sheet that the CDRs, the WhatsApp chats, the mobile phones of the petitioners and the DVRs have been sent to the Forensic Science Laboratory, Rohini and a report on that is awaited. It is also mentioned in the charge-sheet that investigation is being carried out with respect to the allegedly forged labels that were recovered from the possession of one of the accused and the samples of those labels have been sent to the company called Copivri - which manufactures the Remdesivir injections, to check the authenticity thereof. It is also mentioned in the charge-sheet that the reports from FSL and the report from Copivri are awaited. The charge-sheet sums up that the conspiracy was hatched by the petitioners to cheat the public at large at the height of a raging pandemic. The charge-sheet also states that the petitioners are part of a well organised syndicate whose motive was to loot people during a vulnerable time and was largely a crime against society and humanity.

- g) Accused Mohan Kumar Jha filed an application for grant of bail before the Trial Court which was rejected *vide* order dated 29.04.2021. Thereafter he filed an application for bail before the Sessions Court which was rejected by the learned Additional Session Judge *vide* order dated 25.05.2021.

- h) Accused Mohd. Shoaib Khan filed an application for grant of bail before the Trial Court which was rejected *vide* order dated 21.07.2021.
- i) Accused Pushkar Chandrakant Pakhale filed an application for grant of bail before the Trial Court which was rejected *vide* order dated 09.06.2021.
- j) Accused Aditya Gautam filed an application for grant of bail before the Trial Court which was rejected *vide* order dated 13.08.2021. Thereafter he filed an application for bail before the Sessions Court which was rejected by the learned Additional Session Judge *vide* order dated 23.08.2021.
- k) The petitioners were not granted bail by the Subordinate Courts on the ground that the petitioners are accused of a very heinous offence and there is an apprehension of the petitioners' fleeing from justice.
- l) The petitioners have thereafter filed the instant petitions for grant of bail.

3. Heard the learned counsels appearing for the petitioners and learned APP for the State and perused the material on record.

4. The learned counsels appearing for the petitioners submit that the petitioners have been in judicial custody for the last seven months now and the charge-sheet has been filed. They submit that no useful purpose would be served in keeping the petitioners in prolonged judicial custody. It is argued by the learned counsels for the petitioners that the material on record has only been obtained through compulsive disclosure statements elicited out of the petitioners by force and not by their own volition. The learned

counsels for the petitioner submit that the material collected against the petitioners is weak. They further state that no independent witness was present during the time of arrest of the petitioners and the guidelines of arrest, as laid down by the Supreme Court in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, were not followed. They further submit that the petitioners are mainly charged with the offences punishable under Sections 420/188/120B/34 IPC and Sections 3/7 of the Essential Commodities Act and Section 3 of the Epidemic Disease Act. They state offences under Sections 468 and 471 IPC were added later on. It is stated by the learned counsels for the petitioners that the petitioners are not charged with offences under the Drugs and Cosmetics Act, and they are mainly charged with the offences punishable under Section 420 IPC and, if convicted, the petitioners can be sentenced to undergo imprisonment for a maximum period of seven years. They further state that the evidence, which is primarily documentary in nature, is already in the custody of police and therefore, no useful purpose would be served in keeping the petitioners in custody. The learned counsels for the petitioners, therefore, submit that the petitioners be granted bail.

5. *Per contra*, Mr. Amit Chadha, learned APP for the State, vehemently opposes the bail applications of the petitioners by contending that a co-ordinated nexus of these individuals was operating to dupe innocent and desperate people whose family members were ill and these persons exploited the gullibility of the innocent people by selling fake Remdesivir injections at exorbitantly high prices. The learned APP for the State draws the attention of this Court to a notification/Office Memorandum dated 10.04.2021, issued by the Drugs Controller General (India), Circulated *vide* File No.ED/Misc.273/2020-3, which pertains to the hoarding of essential life

saving drugs and prohibits black-marketing/over-charging of these drugs. The learned APP for the State submits that Remdesivir injections were covered as a controlled drug/commodity in the abovementioned notification and were essential and scarce commodity. He submits that an extreme view must be taken of this offence as the petitioners produced forged injections and forged the labels of original company to lend authenticity to the fake drugs that they were peddling. He states that due to criminally greedy actions of the petitioner, many innocent people lost their lives. He further submits that the statements of the victims have also been recorded and all the material collected against the petitioners show a *prima facie* and deliberate involvement of the petitioners herein in misleading the public at large. He states that the report from the FSL and Covipri are awaited, and there is an apprehension of the petitioners influencing the witnesses and tampering with evidence in case they are granted bail. He further submits that the charges are yet to be framed and this Court should not entertain the present petitions and once the Trial Court frame the charges the petitioners will be at liberty to seek appropriate remedy for discharge.

6. The factors which have to be kept in mind while considering an application for bail are:

- a. whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;
- b. nature and gravity of the accusation;
- c. severity of the punishment in the event of conviction;
- d. danger of the accused absconding or fleeing, if released on bail;

- e. character, behaviour, means, position and standing of the accused;
- f. likelihood of the offence being repeated;
- g. reasonable apprehension of the witnesses being influenced; and
- h. danger, of course, of justice being thwarted by grant of bail.

7. Charge-sheet has been filed. The evidence, which is primarily documentary in nature, has been collected and is already in the custody of Police. The exhibits have been sent for sampling and for verification. The petitioners are accused of offences punishable under Sections 420/468/471/188/120B/34 IPC and Sections 3/7 of the Essential Commodities Act and Section 3 of the Epidemic Disease Act and if convicted the petitioners can be sentenced for imprisonment for a maximum period of seven years. The petitioners have already spent seven months in custody. Though the petitioners are accused of a nefarious and depraved offence, taking into account the fact that the evidence which is primarily documentary in nature and is already in the custody of Police, this Court is of the opinion that no useful purpose would be in prolonging the incarceration of the petitioners.

8. It is settled law that the magnitude of the offence cannot be the only criterion for denying bail. The object of bail is to secure the presence of the accused at the Trial. The object of bail is neither punitive nor preventative and the person who has not been convicted should be held in custody pending Trial only to ensure his attendance at Trial; and to ensure that the evidence is not tampered with and the witnesses are not threatened. If there

is no apprehension of interference in administration of justice in a criminal trial by an accused then a person should not be deprived of his liberty.

9. Accordingly, this Court is inclined to grant bail to the petitioners on the following conditions:

- a) Each petitioner shall furnish a personal bond in the sum of Rs.1,00,000/- with two sureties each of the like amount, one of them should be a relative of the petitioner, to the satisfaction of the Trial Court.
- b) The petitioner in BAIL APPLN.2497/2021 (Pushkar Chandrakant Pakhale) & the petitioner in BAIL APPLN.3346/2021 (Aditya Gautam) are the residents of Maharashtra and Uttarakhand respectively. They are directed to find a residence in Delhi and stay in Delhi till the completion of Trial. The Trial Court is directed to verify the address of the petitioners before accepting the Personal Bond.
- c) The petitioners are directed not to leave NCT of Delhi without the prior permission of the Court and they shall continuously reside in Delhi till the completion of trial.
- d) The petitioners are directed to give their mobile numbers to the Investigating Officer and shall keep their mobile phones operational at all times.
- e) The Petitioners are directed to report to the concerned Police Station thrice a week i.e. on every Monday, Wednesday and Friday at 10:30 AM and shall be released by the Police by 1:00 PM after recording their presence.

f) The Petitioners shall not contact any witnesses or tamper with evidence.

g) Violation of any of the above conditions by the Petitioner would result in the immediate cancellation of the bail granted.

10. It is clarified that none of the contents of this order shall have any bearing on the Trial and shall not tantamount to a comment on the merits of the case. The Trial Court shall remain unhindered by this order during the Trial.

11. With the above observations, this petitions are disposed of along with the pending applications.

SUBRAMONIUM PRASAD, J

NOVEMBER 16, 2021

S. Zakir/ Rahul