

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.24340 of 2022 (O&M)

Reserved on: 01.06.2022

Decided on: 02.06.2022

Anav Jain

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Bipan Ghai, Sr. Advocate
with Mr. P.S. Bindra, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner in FIR No.177 dated 25.04.2022 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Rai, District Sonapat.

Learned senior counsel for the petitioner has argued that the FIR is registered at the instance of Dr. Shashi Kant Sharma, District Ayurvedic Officer, Ambala, with the allegations that he along with a team had inspected the premises of M/s. World of Hemp Global Private Limited and the petitioner is the Director of the same. It is further stated that during the inspection, it is found that Resin was separated from the Cannabis ("**Hemp**") by way of a process and no licence was produced for preparation of "**Resin**" and at the time of recovery of 67.05 Kgs, there is a violation of Section 20 of the NDPS Act. The recovered

Cannabis was taken in possession in 213 plastic bags and investigation was conducted and therefore, the information was sent to the Police Station for registration of the FIR, upon which the present FIR was registered.

Learned senior counsel for the petitioner has further submitted that in fact, vide licence dated 02.06.2020, M/s. World of Hemp Global Private Limited was granted the manufacturing licence for manufacturing and sale of Ayurvedic and Unani Medicines from 02.06.2020 to 01.06.2025 and the licence was also under the Drugs & Cosmetics Rules. It is stated under Form 25-D attached to the said licence that Technical Staff i.e. Dr. Jitender Kumar, BAMS and Madhav Aggarwal, B.Sc., were appointed as Technical Person and Quality Control and about 40 Classical Ayurvedic Formulations were approved, as per the list attached with the licence. It is further stated that again on 10.09.2020, another permission was granted for manufacturing of 146 Classical Ayurvedic Formulations as per the list attached.

Learned senior counsel for the petitioner has then referred to memo dated 28.12.2020 issued by Excise and Taxation Commissioner, Haryana, Panchkula to grant Druggist Licence in Form 24 to M/s. World of Hemp Global Private Limited. The operative part of the said memo, reads as under:-

“As recommended by you, a license in form 24 in favour of M/s. World of Hemp Global Pvt. Ltd., Plot No.1796, 2nd Floor, HSIIDC, Rai Sonepat is granted under rule 74 of the Haryana Narcotic Drugs and Psychotropic Substances Rules, 1985 for the remaining period of current financial year 2020-21 for the possession of 35 Ton annually hemp and 12 Ton hemp as one time

possession limit for manufacturing ayurvedic medicine on the basis of valid drug licence and recommendation issued by State Licensing Authority, Directorate of AYUSH Department, Haryana, Sector – 3, Panchkula. It may be delivered to the applicant under proper receipt.”

Learned senior counsel for the petitioner has also submitted that during the subsistence of the licence, which allowed the petitioner to manufacture all the Ayurvedic Medicines, in which permission was granted to keep "**Hemp**", the FIR has been registered with total incorrect facts as the petitioner is having a valid licence for the same. It is further argued that during the investigation, a query was put to the said licensing authority Directorate of Aayush Panchkula, Chandigarh, wherein a clarification has been granted that the licence is granted to the firm for manufacturing of Oil and the definition of "**Hemp**" extract ("**Ghan i.e. extract of a medicinal plant**") is defined under Rule 158(b)(ii)(A)(v) of the Drugs and Cosmetics Rules. It is stated that "**Ghan**" is required for manufacturing of Oil, therefore, the question put to the authority using "Bhang Ghan" being synonymous to Cannabis Resin is incorrect. Learned senior counsel for the petitioner has then referred to the report submitted by the complainant before the Sessions Judge in reply to the application for bail, wherein in Para 4, it is stated as under:-

“4. That during inspection the accused was found in possession of 10 ton Hemp. On asking, accused had produced document granting him permission for possession of 35 ton Hemp annually and 12 ton Hemp at one time possession limit for manufacturing ayurvedic medicines.

In search of the store of the accused person, 6705

Kg of Hemp Extract (Ghan) was found, for which the accused could not tender any explanation. Neither he produced any permission letter for processing and possessing this huge quantity of Ghan. Whereas according to instructions accused must keep the licence and any certificate of renewal in force on the approved premises so that it could be produced at the time of inspection.”

It is submitted that in view of the reply filed by the complainant itself, the recovery was of 67.05 Kgs of "**Hemp**" Extract ("**Ghan**"), for which the petitioner was granted a valid licence and the prosecution of the petitioner is patently illegal.

Learned senior counsel for the petitioner has also contended that total incorrect procedure has been adopted while registering the FIR. It is argued that as per the complainant, who is a District Ayurvedic Officer along with Drug Controller Officer, Ambala, and Sonapat visited/inspected the premises of the petitioner and on finding 67.05 Kgs of "**Hemp**", sealed the same by treating it to be a narcotic substance and then sent the information to the Police Station for registration of the FIR under Section 20 of the NDPS Act.

Learned senior counsel for the petitioner has further submitted that the entire procedure given under the NDPS Act is given a go-by as in case of inspection, any incriminating recovery was to be effected at the first instance, the information is required to be sent to the Police Station, so that a competent police officer, authorized to conduct investigation in a NDPS case be deputed to visit the spot and after following the process regarding recovery of any alleged contraband from the premises, the same could be effected and therefore, it will be a matter of trial whether the manner in which the recovery is made by the

complainant party, who after sealing the same, sent information to the Police Station amounts to following a correct procedure. It is further argued that the petitioner is holding all valid licence and is in custody for the last 01 month and 04 days and his custodial interrogation is no more required.

Learned senior counsel for the petitioner has also relied upon various bills, e-way bills, tax invoices, to show that the petitioner has set up a unit after taking proper permissions from the Department of Promotion of Industry and Internal Trade, who has also given a certificate, in this regard however, when the raid was conducted, due to COVID-19 situation, there was some mechanical default in the machinery and therefore, in the intervening period, when the raid was conducted, the said recovery was effected.

Learned senior counsel for the petitioner has further referred to Section 2(iii) of the NDPS Act, defining Cannabis "**Hemp**", which reads as under:-

“(iii) Cannabis (Hemp) means -

(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

*(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (**excluding the seeds and leaves when not accompanied by the tops**), by whatever name they may be known or designated; and*

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;

(iv) *“Cannabis plant” means any plant of the genus cannabis”*

Learned senior counsel for the petitioner has also contended that further allegations are that 213 plastic bags of **"Hemp leaves"** were also recovered and in terms of Section 2(iii) of the NDPS Act, it will be a matter of trial whether the recovery of **"Hemp"** would fall under the NDPS Act or not as the same are excluded from definition of **"Hemp"** under Section 2(iii)(b) of the NDPS Act.

In reply, learned counsel for the State has submitted that though there is a licence for running the factory and manufacturing of Ayurvedic Medicines under the name and style of M/s. World of Hemp Global Private Limited, as per the Certificate of Recognition dated 26.11.2018 as well as the Licence issued in this regard and after taking permission from the Excise and Taxation Department, the Cannabis were purchased from Ravindra Chaudhary of Uttrakhand and even the transportation permissions were also taken from the Excise and Taxation Department.

However, merely by purchasing Cannabis Leaves from Ravindra Chaudhary, the accused could not produce any licence to process “Bhang Ghan” and the licence in this regard was issued only on 11.03.2022. It is further argued that at the spot, the complainant found no manufacturing of Ayurvedic Medicines and working area of the premises was found occupied by another firm namely M/s. Hindustan Ayurveda and Medical Research and the recovery effected falls in commercial quantity.

After hearing the counsel for the parties, I find merit in the

present petition for the following grounds:-

(a) As per the case set up in the FIR, the complainant being the District Ayurvedic Officer along with Drug Control Officer inspected the premises of the petitioner and recovered Hemp Cannabis of 67.05 Kgs and finding it to be a violation of Section 20 of the NDPS Act, sealed the same with 03 seals of 'PS' and thereafter, he sent an information to the Police Station for registration of the FIR and therefore, it will be a matter of trial, whether a procedure prescribed under the NDPS Act was followed in this case or not as on having suspicion of some narcotic substance in the premises of the petitioner, before conducting the further proceedings or seizing and sealing the "Hemp", an information was required to be given to the police and further proceedings were to take place in the presence of a competent police officer under the NDPS Act. Further the information was sent after completing the seizure procedure by the District Ayurvedic Officer and therefore again, it will be a matter of trial whether proper and legal procedure has been followed or not.

(b) The petitioner is holding a valid licence from Aayush Department, which deals with the Ayurvedic manufacturing of the Medicines as well as the Excise and Taxation Commissioner, in which permission was granted to the firm of the petitioner for possessing 35 tonnes of "Hemp" annually and 12 tonnes of "Hemp" at one time possession for manufacturing of the Ayurvedic Medicines and the recovery effected at the spot is far less than the permissible limit. The licence further show that the petitioner was granted permission for manufacturing of more than 200 Ayurvedic Formulations and the petitioner has produced all the bills, e-way bills, receipts, tax invoices to show that the material i.e. Cannabis leaves was purchased in due

process from the authorized seller.

(c) In reply to the Court query by the trial Court/Sessions Judge, Sonapat, the complainant has stated that 67.05 Kgs of "Hemp" extract "Ghan" was found and therefore, it will be matter of trial whether it would fall within the mischief of Section 20 of the NDPS Act, on the basis of the interpretation under Section 2(iii) of the NDPS Act, defining Cannabis ("Hemp"). It is the case of the prosecution that till date, no report is received from the FSL to declare that the recovery was, in fact, Resin and not "Ghan".

In view of what has been discussed hereinbefore, without commenting anything on merits of the case, considering the fact that the investigation *qua* other aspects is complete and also in view of the fact that the petitioner is in custody for the last 01 month and 04 days; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

02.06.2022
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No