

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

**Reserved on: 19.04 .2022
Pronounced on:17.05.2022**

CRM-M-37497-2021 (O &M)

VARINDER KUMAR **...Petitioner**

Versus

STATE OF PUNJAB **...Respondent**

2. **CRR-822-2021**

SUNIL KUMAR @ SONU **...Petitioner**

Versus

STATE OF PUNJAB **...Respondent**

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by : Mr. Sanjiv Gupta, Advocate
for the petitioner
(in CRM-M-37497-2021)

Mr. Sunil Chadha, Sr. Advocate with
Mr. Lakshay Bector, Advocate
for the petitioner
(in CRR-822-2021)

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J.

Two petitions viz. Criminal Revision No. 822 of 2021 titled as
“ *Sunil Kumar @ Sonu versus State of Punjab* ” and Criminal
Miscellaneous No.37497 of 2021 titled as “ *Varinder Kumar versus State of
Punjab* ” are being decided by a common order.

2. The parties agree that the dispute in question can be decided through one single order as both the petitions arise from the same FIR. While Criminal Revision No. 822 raises a challenge to the order dated 24.03.2021 passed by the Judge, Special Court, Bathinda on an application submitted by the petitioner under Section 227 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C”.) seeking discharge in case FIR No. 69 dated 12.08.2019 registered at Police Station Thermal, Bathinda under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as the “NDPS Act”), the criminal miscellaneous No. 37497 of 2021 has been filed by the petitioners seeking quashing of the FIR No. 0069 dated 12.08.2019 along with all consequential proceedings.

FACTS OF CRIMINAL REVISION No. 822 of 2021

3. . Briefly, the facts of the case are that the FIR in question was registered on the statement of Inspector Gurdeep Singh. A secret information is stated to have been received by the Police Officer when he was present at Rose Garden Chowk in Government vehicle bearing No. PB-65-D-9070 driven by ASI Harbans Singh, 945 in connection with patrolling and checking of intoxicants when he informed that one Sunil Kumar @ Sonu S/o Rashpal Kumar Aggarwal resident of Maur Mandi, who is confined in Central Jail, Bathinda in FIR No. 100 dated 11.07.2019 registered under Section 22 of the NDPS Act at Police Station Maur, when he was out of the Jail, he had kept a pile of intoxicant tables in some transport. Hence, a ruqa in this regard was sent through Constable Gagandeep Singh, 1869 for registration of the case. DSP of the area was also requested through

telephone to reach at the spot. Production warrants of the accused Sunil Kumar @ Sonu were obtained and he was taken in custody in the instant case. Upon interrogation, a disclosure statement of Sunil Kumar @ Sonu was recorded with the police that he had ordered 2,34,000 tablets of Tredol-100 that are packed in 10 boxes and have been brought through Jaipur Golden Transport from Padampur Gujarat and are lying concealed in the store rooms of Kothari Transport under tarpaulin. It was also contended that owner of the transport has no idea about the same and that he had gone to seek delivery of the said consignment, however, the same could not be released to him as he was not in possession of the Billity. The said statement was duly recorded and the police officials went to the spot and also associated independent private witnesses. The accused Sunil Kumar @ Sonu produced before Inspector Gurdeep Singh 10 boxes of intoxicant tablets from under a tarapaulin lying in a room of Kothari Transport. Upon opening of each box, there were 117 boxes containing 200 tablets each. Thus a total of 2,34,000 intoxicant tablets make of Tredol-100 were recovered. All the boxes were marked with Serial numbers and parcels were prepared. The sample parcels were prepared and sealed and after verification were taken into possession, the site plan was prepared. Statements of witness were also recorded. On returning, ASI Farvinder Singh produced the case property. On 14.08.2019, Sub Inspector Khem Chand produced the accused along with the case property in the Court where the Magistrate on seeing the sealed parcel of intoxicant tablets, broke the seal and took out 1-1 strip from the parcel and prepared 20 samples parcels and the remaining parcels of intoxicant tablets measuring 23380 was sealed. The accused Sunil Kumar @ Sonu was interrogated and on the basis of statement of one Krishan Banal

son of Sohan Lal, Varinder Kumar son of Surinder Kumar (petitioner in CRM-M-37497-2021) was nominated as an accused. It is further stated that statement of one Krishan Bansal was also recorded who nominated Varinder Kumar. Police remand of Sunil Kumar and production warrants of Varinder Kumar were obtained. One Manoj Kumar son of Om Parkash produced Billity Bill of recovered tablets & on his statement, Rakesh Kumar was also nominated as an accused. Manoj Kumar also stated that the mobile number mentioned on the billity belonged to the receiver namely Rakesh Kumar resident of Dhakoli. Statement of Krishan Bansal was also recorded who stated that Varinder Kumar son of Surender had come to claim the parcels against Billity in the name of BMW Medicos and Varinder thereafter said that Sunil Kumar @ Sonu will bring the Billity in his name & collect the consignment. It is contended that both the petitioners are nominated as accused on the statement of Krishan Bansal. The billity bill has been placed on record as Annexure P-5 and the same is stated to have been issued in favour of one BMW Medicos, Near Bus Stand, Maur Mandi, Bathinda for which a drug license under Drugs & Cosmetic Act, 1940 has been issued by the Department of Drugs Control and that the said license was valid up to 11.09.2021. It is contended that one Narayan Dass is the proprietor of the BMW Medicos. A perusal of the form 20 B issued under Rule 61(1) shows that the specific conditions which the licensee was permitted to deal with and the same were drugs except for a specific drugs named in hereinafter below:

*“Dextropropoxyphene, Diphenoxylate, codeine,
and Psychotropic Substances namely Nitrazepam, Pentazocine,
Buprinorphene, and their salts in the formulations”*

4. Upon conclusion of investigation, a final report under Section 173 Cr.P.C. was filed before the Illaqa Magistrate and the matter was committed to the Special Court. An application under Section 227 Cr.P.C. was filed by the petitioner Sunil Kumar @ Sonu seeking discharge on the ground that the petitioner was already in custody in Central Jail, Bathinda in case FIR No. 100 dated 11.07.2019 registered under the NDPS Act and that the present case has been foisted against him which is after one month of the above said false case. Besides, it was stated that petitioner had no concern with the alleged recovery and nothing incriminating has been recovered from the possession of the petitioner. The said application filed by the petitioner was dismissed by the Judge, Special Court, leading to the filing of Criminal Revision No.822 of 2021.

FACTS OF CRIMINAL REVISION No. 37497-2021

5. The Criminal miscellaneous No. 37497 of 2021 on the other hand, is filed under Section 482 Cr.P.C. titled as “Varinder Kumar versus State of Punjab seeking quashing of FIR and consequent proceedings arising therefrom against the petitioner. It is stated in the said petition, the case and the allegations were made out against Sunil Kumar @ Sonu. Secret information was received only against Sunil Kumar @ Sonu (Petitioner in CRR. 822 of 2021) and even he was already in custody in FIR No.100 dated 11.07.2019. It would be highly strange that Sunil Kumar never informed about the same during Police remand in the said case. Even the secret informer remain quite for almost a month despite being aware of the intoxicant tablets having been stored by Sunil Kumar @ Sonu and it would be presumed that he was aware also of the arrest of the said Sunil Kumar @

Sonu. It is contended that the Police is inimical towards the petitioner and had earlier falsely implicated him in case FIR No. 44 dated 04.04.2019 registered under Section 22 and 29 of the NDPS Act which was initially registered against one Rahul Aggarwal and Sunil Kumar. Later on 05 more persons were implicated in the same, without any basis and solely on the basis of one bill pertaining to legitimate medicine purchased from the shop of the petitioner at Zirakpur under the name of Five Faced Remedies. The petitioner was called for the inquiry in the said FIR and it was duly informed that the petitioner is a licensed Pharmacist and having a valid license and that the purchase of the medicine Afilonac-SP-Tab was made against Bill No. 100320 dated 23.03.2019 by Surya Medical Agency, Mansa and delivery was also taken. However, the recovery of a medicine i.e. Tramadol-SR was shown to have been recovered and the petitioner was made as a co-accused only statement of one Hakam Singh recorded on 22.07.2019. However, when the final report was filed, the said Hakam Singh was not amongst the list of witnesses cited or relied upon by the prosecution. Realizing the false implication the lacunae in investigation and in order to malign the petitioner as well as to portray him as a habitual offender, he has been implicated in the present case on the basis of disclosure statement made by one Krishan Bansal.

6. Learned counsel appearing on behalf of the petitioners have argued that statement of Krishan Bansal was recorded wherein he has stated that on 01.06.2019, he was sitting at Kothari Transport, Bathinda which belongs to one Om Parkash who is friend of Krishan Bansal and that at the same time neither the said Om Parkash nor his son Manoj Kumar was

present at the shop. Varinder Kumar, the petitioner herein, is claimed to have come to Krishan Bansal and claimed that 10 parcels are received from Gujarat in the name of B.M.W. Medicos belong to him and that the same be delivered to Sunil Kumar who shall produced the billity of the same. It is further pointed out that Sunil Kumar had disclosed during investigation for the consignment and the recovery was effected from him. He contended that the petitioner is not known to Krishan Bansal and he had never visited Kothari Transport. Besides, he is a licensed Pharmacist and is doing the business from his licensed premises situated in Zirakpur and the entire sale/ purchase is made under proper receipt. There was no reason or occasion for the petitioner to make an inquiry with respect to the consignment of BMW Medicos or to go to Kothari Transport, Bathinda. It is further submitted that there was no occasion for the said Krishan Bansal to be present at Kothari Transport considering that proprietor of Kothari Transporter Manoj Kumar and Om Parkash and that neither of the said persons was available at the Transport at the relevant point of time when alleged inquiry was made and instructions are claimed to have been given. It is alleged that the petitioner has been falsely implicated and that the statement of Krishan Bansal is not admissible against the petitioner as no recovery has been effected pursuant to the said statement.

7. A reference was also placed on the judgment dated 16.03.2011 passed by this Court in Criminal Revision No. 950 of 2010 (O&M) titled as *“Neelam Sharma versus State of Punjab”* to contend that a criminal Court does not act as a rubber stamp of the Investigating Officer and that before framing of a charge, Court must look at the material collected by the

Investigating Officer to find out as to whether there is sufficient material to frame charge against the accused. When even the entire material is accepted in *toto* and yet it is not sufficient to lead to conviction, discharge must follow. Framing of charges in such a case would be wholly unjustified. Reference was also made to an order passed by the Hon' ble Supreme Court in Criminal Appeal No. 1273 of 2021 titled as Sanjeev Chandra Agarwal & Another versus Union of India. The High Court had relied upon the statements made by other accused and had upheld the framing of charge against the accused persons. The said order was set aside by the Supreme Court by observing that the High Court was not correct in relying on the statement made by other accused under Section 67 of the NDPS Act.

8. Per contra, the submissions advanced by the petitioner had been responded to by the learned State counsel by making a reference to the Status report filed by way affidavit of Aaswant Singh, PPS, Deputy Superintendent of Police, Sub Divisional: City-IT, Bathinda. It is contended that the petitioner Sunil Kumar @ Sonu petitioner in Criminal Revision No. 822 of 2021 is carrying on business as a wholesale Chemist under the name and style of M/s Best Player Medicos and BMW Medicos, Bathinda used to transport huge quantity of intoxicating tablets through Delhi-Punjab Transport and that FIR No. 100 dated 10.07.2019 was registered against him at Police Station Maur for offence under Section 22 and 29 of the NDPS Act. During search 1,56,400 intoxicated tablets were recovered from a car bearing registration No. PB-03-AJ-9516. Further, a godown of Delhi-Punjab Transport Maur Mandi was also searched leading to further recovery of 9,11,400 intoxicant tablets were recovered and a recovery of 20,550

intoxicant tablets were recovered from Pardeep Kumar Goyal. A total of 10,88,350 intoxicant tablets of different kind and different make were recovered from the accused persons. While the petitioner was in custody in the aforesaid FIR No. 100 dated 10.07.2019, a secret information was received on 12.08.2019 that there is yet another accumulated pile of intoxicant tablets against the petitioner. A recovery of 2,34,000 intoxicant tablets of Tredol-100 was thereafter effected at the disclosure of the petitioner from the godown of Kothari Transport. It was further acknowledged by the petitioner that he had gone to take delivery of the said tablets from the Transport, however, he could not take the said delivery as he was not in a possession of the billity at that time. The recovery in question was effected in presence of independent witnesses. During the interrogation, it was disclosed by Sunil Kumar @ Sonu that he had purchased the said contraband from Varinder Kumar son of Surinder Kumar resident of Green Valley Apartment, Dhakoli, Zirakpur (petitioner in CRM-M- 37497 of 2021) and that the tablets in question were brought from Palanpur Gujarat through Jaipur Golden Transport and was to be delivered to the petitioner. It is claimed that the payment for the same had been made to the Varinder Kumar. Thereupon the said Varinder Kumar was also nominated as an accused vide DDR No.28 dated 15.08.2019. Statement of Krishan Bansal son of Sohan Lal was also recorded on 15.08.2019. Reference is however not being made to the same as the same has already been referred to earlier. A witness Manoj Kumar also placed the billity wherein phone number at the place of recipient of the consignment was mentioned and that the said phone number belonged to Rakesh Kumar son of Chanan Ram resident of village Dhakoli District Mohali. It is also alleged

that during investigation, evidence was collected to the effect that there is a medical agency named as 'Life-line Medical Agency', Dhanera, District Banaskantha (Gujrat) and is purportedly owned by one Arvind Bhai son of Dhanna Bhai Chaudhary and Mukesh Bhai son of Shankar Bhai resident of village Kardhani District Banaskantha and that the shop in question was lying closed for more than 06 months. Further, there was yet another agency under the name and style of Shri Shakti Medical Agency owned by Patel Bharmal Bhai son of Nagzi Bhai and that even the said shop was also lying closed. The owners of the said shop are not doing business in Medical field and are claimed to have purchased Tridol-100 tablets from New Tech Health Care Pvt. Ltd., Narela, Delhi and further that the above said accused namely Arvind Bhai son of Dhanna Bhai Chaudhary and Mukesh Bhai son of Shankar Bhai by misusing their license have sent these intoxicated tablets through Ramesh Bhai son of Nagzi Bhai to Jaipur Golden Transport by misrepresenting the same as medical supplies to the petitioner Sunil Kumar @ Sonu for destination at Bathinda. Finally, 07 persons were nominated as accused and a final report was filed against them. It was also pointed out that even though petitioners claims that the consignment was purchased by M/s BMW Medicos against bill, however, the same is not substantiated by any admissible documentary evidence. It was pointed out that charge against the accused persons had already been framed on 24.03.2021 and that 03 prosecution witnesses out of 26 witnesses had already been examined. The details of 09 other cases registered against the petitioner, under the NDPS Act were also mentioned.

9. I have also heard learned counsel appearing on behalf of the respective parties and have gone through the record with their able assistance.

10. It is not disputed that while framing of charge, the Court does not act as a mere Post Office and is entitled to look into the evidence collected by the prosecution and sought to be relied upon by it to prove its case. The said assessment is required to be made at the stage of framing of charge, however, in doing so, it does not go to explore the probative value of such evidence. The existence of a prima facie material and evidence which indicates involvement of the accused in commission of the offence cannot be ignored. The unholy cartel of the accused persons where petitioner Varinder Kumar in CRM-M- 37497 of 2021 seeks the consignment from a defunct and non-functioning supplier of Gujarat to be delivered to petitioner Sunil Kumar @ sonu on the strength of the billity where the source of consignment is sought to be kept concealed cannot be completely ignored by the Court. Needless to mention that recovery of 2,34,000 tablets had been effected at the disclosure of petitioner Sunil Kumar. Thus, the disclosure having led to recovery of the intoxicant tablets would be admissible against the petitioner under Section 27 of the Evidence Act. It cannot thus be said that there is no evidence against petitioner Sunil Kumar. Statement of Krishan Banal as also statement of Manoj Kumar owner of Kothari Transport had been recorded who have testified that petitioner-Varinder Kumar had come to enquire about the consignment and claimed it to be belonging to him and to direct that the said consignment be released in favour of Sunil Kumar @ Sonu. The date of the visit of Varinder Kumar is

of 01.06.2019 where as is he is allegedly taken in custody in FIR No. 44 dated 04.04.2019 in the month of August, 2019. Hence, the act of the petitioner Varinder Kumar claiming that the consignment belonged to him and to be released favour of Sunil Kumar @ Sonu (petitioner in CRR-822-2021) at whose disclosure the same was eventually recovered, it cannot be said that it is a case of no evidence against the petitioner. The reliance on the billity appended by the petitioner along with CRR-822 of 2021 cannot be accepted as valid document especially when the consignor of the consignment namely 'Life Line Medicos' itself is a non-existent entity. No sanctity, can thus be attached to such a forged bill. Even otherwise, the genuineness of the said bill is yet to be established. The said document cannot be accepted as per se admissible document and has to be proved during the course of trial. The import/transportation of the material recovered by the prosecution at the disclosure of the co-accused Sunil Kumar @ Sonu is claimed to have been undertaken by petitioner-Varinder Kumar. The charge against the petitioners has already been framed and that the evidence has also commenced. The petitioner Varinder Kumar never chose to raise a challenge to the orders framing charge against him and has fixed this petition under Section 482 Cr.P.C. for seeking quashing of the FIR. It is also well established that once charge has been framed against the accused, there is an application of judicial mind and that some prima facie evidence having been noticed, the charge had been framed. Hence, the Courts should be circumspect and should exercise greater restraint in exercising the jurisdiction under Section 482 Cr.P.C. Even though it is alleged that the said witness namely Krishan Bansal has not supported the

have not supported the case of the prosecution during their testimony, the same would not make out a ground unto itself for invoking jurisdiction under Section 482 Cr.P.C. and quash the further proceedings.

11. The judgment with respect to the commission of any offence, if any, has to be made on the basis of the entire evidence that is brought on record and not in a piecemeal manner by reading the testimony of the PW's in a manner as is convenient to an accused. The entire chain of circumstances as also the other link evidence completing the chain of events collected by the Investigating Agency has to be seen to ascertain the involvement of an accused and to return a finding of an acquittal. It would not be appropriate for the High Court to derive its conclusion in haste and to return finding in favour of an accused on the basis of incomplete evidence and merely by making a reference to some evidence of the prosecution that has turned hostile and to there upon pronounce a judgment of acquittal.

12. The High Court should restrain in passing a judgment on probative value of evidence collected by the Investigating Agency and to scuttle a trial unless there is over-whelming, cogent, convincing and per se admissible evidence as would render continuation of the proceedings in a Court of law illegal, perverse or futile. The High Court should not ordinarily take up upon itself the task of pre-judging the culpability of an accused by pre-empting the probative value of the evidence and to return the finding of acquittal.

13. The present petitions are accordingly dismissed. However, taking into consideration the peculiar circumstances of the present case as also the fact that prosecution witness Krishan Banal has not supported the

case of the prosecution and has turned hostile, I am of the opinion that ends of justice would be well served in case the trial Court is directed to conclude the prosecution evidence expeditiously and preferably within a period of six months from the date next fixed before the trial Court for recording of the prosecution evidence.

14. The instant petitions are accordingly dismissed with directions as aforesaid.

**(VINOD S. BHARDWAJ)
JUDGE**

MAY 17, 2022
Vishal sharma

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