

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212 (06)

Decided on : 21.09.2022

I CRM-M-37964-2021 (O&M)

Mohd. Shahvar . . . Petitioner(s)

Versus

State of Punjab . . . Respondent(s)

II CRM-M-49137-2021(O&M)

Pardeep Kumar . . . Petitioner(s)

Versus

State of Punjab . . . Respondent(s)

III CRM-M-22006-2022(O&M)

Shah Nazar . . . Petitioner(s)

Versus

State of Punjab . . . Respondent(s)

IV CRM-M-23956-2022(O&M)

Shah Alam . . . Petitioner(s)

Versus

State of Punjab . . . Respondent(s)

V CRM-M-6378-2022(O&M)

Arshad Khan . . . Petitioner(s)

Versus

State of Punjab . . . Respondent(s)

VI CRM-M-25098-2022 (O&M)

Mohd. Arshad . . . Petitioner(s)

Versus

State of Punjab . . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. G. S. Ghuman, Advocate
for the petitioner in CRM-M-37964-2021.

Mr. Sarfraj Hussain, Advocate
for the petitioners in CRM-M-22006-2022, CRM-M-6378-2022
and CRM-M-23956-2022(O&M)

Ms. Ishita Jain, Advocate
for the petitioners in CRM-M-49137-2021.

Mr. Mazlish Khan, Advocate
for the petitioners in CRM-M-25098-2022.

Mr. Ashish Yadav, Addl. AG, Haryana.

SANJAY VASHISTH, J. (Oral)

By this common order, I propose to dispose of aforementioned six petitions, which have been filed by Mohd. Shahvar, Pardeep Kumar, Shah Nazar, Shah Alam, Arshad Khan and Mohd. Arshad, respectively, under Section 439 Cr.P.C., for grant of regular bail in case FIR No. 46 dated 06.05.2021, under Sections 188, 278 & 468 IPC; Section 103 of the Trade Marks Act, 1999; Section 43 of the Water (Prevention and Control of Pollution) Act, 1974; Section 7 of the Essential Commodities Act, 1955; Section 3 of the Epidemic Diseases Act, 1897; Sections 53, 54 & 57 of the Disaster Management Act 2005; and Section 27 of the Drugs and Cosmetics Act, 1940, registered at Police Station Chamkaur Sahib, District Rupnagar, Punjab.

At the very outset, learned counsel for the petitioner(s) submits that Section 27 of the Drugs and Cosmetics Act, 2005, no more exists in the present FIR because a separate complaint has already been filed by authorized persons for violation of the provisions of said Act. Learned

counsel further submits that now the petitioners are liable to face trial for the offences punishable under the provisions of different statutes, which are detailed here-in-below in tabulated form:

Sr. No.	Section	Act	Punishment	Triable by
1.	188	IPC	1 month	Any magistrate
2.	278	IPC	Fine of Rs. 500, bailable	Any magistrate
3.	468	IPC	Up to 7 years	Magistrate First Class
4.	103	Trade Marks Act, 1999	Six months to 3 years	Any magistrate
5.	43	Water (Prevention and Control of Pollution Act, 1974)	1 year to 6 years	Any magistrate
6.	7	Essential Commodities Act	3 months	Any magistrate
7.	3	Epidemic Disease Act, 1897	1 month	Any magistrate
8.	53	Disaster Management Act, 2005	2 years	Any magistrate
9.	54	Disaster Management Act, 2005	1 year	Any magistrate
10	57	Disaster Management Act, 2005	1 year	Any magistrate

Learned counsel for the petitioner(s) further submits that after completion of the investigation, challan was presented on 07.08.2021. Learned counsel further submits that petitioner(s)/accused, namely, Mohd. Shahvar, Pardeep Kumar, Shah Nazar, Shah Alam, Arshad Khan and Mohd. Arshad, are inside jail since June, 2021 and in this manner they are inside jail for the last one year and three months. It is further submitted that the offences for which petitioners have been challaned, are exclusively triable by the Court of learned Magistrate and maximum sentence for which any of the accused could be punished is upto 7 years under Section 468 IPC and 06 years under Section 43 of the Water (Prevention and Control of Pollution) Act, 1974.

For showing details of the accused/petitioners and the recoveries

from them on the date of their arrest, counsel has furnished details and same

are reproduced here below in the tabulated form:

Sr. No.	CRM No.	Name	Date of Arrest	Recovery
1.	CRM-M-37964-2021	Mohd Shahvar	09.06.2021	22 Lakhs, Packed vials of 53 fake Remdesivir Injections , 35 labels, 27 empty trays along with plastic lids
2.	CRM-M-23956-2022	Shah Alam	13.06.2021	49 Lakhs, 1 sale deed of 173 Sq yard plot, 1 i20 car
3.	CRM-M-25098-2022	Mohd. Arshad	14.06.2021	1 crore
4.	CRM-M-22006-2022	Shah Nazar	06.10.2021	29 Lakhs, 1 sale deed of plot 173 sq yards in the name of this wife nazia, 1 swift desire car,
5.	CRM-M-6378-2022	Arshad Khan	15.06.2021	No recovery
6.	CRM-M-49137-2021	Pardeep Saroha	15.06.2021	No recovery

Learned counsel for the petitioner(s) further submits that in the present case, charges were framed on 08.09.2022 and in no way trial is likely to conclude in near future because 32 prosecution witnesses have been cited by the prosecution, however, none of them has been examined so far. Learned counsel for the petitioner(s) further contends that name of the petitioners have been indicted in the present case only on the basis of disclosure statement of one Manjit whose premises was taken by the petitioner(s) on rent, which is alleged to be used by the accused persons for illegal business. Even otherwise, disclosure statement is inadmissible in evidence.

On the other hand, learned State counsel while opposing the bail petitions of the petitioners submits that as per Section 36AC of the Drugs and cosmetics Act, 1940, there is a bar against the accused seeking bail because at the first instance Court has to give observations that the accused is neither

guilty nor there is likelihood of his committing another offence while on bail.

I have considered the submissions of both the sides, and perused the material available on record with their able assistance.

Section 36AC of the Drugs and cosmetics Act, 1940, reads as under :

“(1) Notwithstanding anything contained in the Code of

Criminal Procedure, 1973 (2 of 1974),—

(a) every offence, relating to adulterated or spurious drug and punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be cognizable.

(b) no person accused, of an offence punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be released on bail or on his own bond unless—

(I) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section includes also a reference to a “Special Court” designated under section 36AB.]”

From a bare perusal of Sub-Section (3) of Section 36-AC of the said Act it is clear that power of High Court regarding bail under Section 439 of Cr.P.C. would still exist even in the present case.

In totality of the fact and circumstances of present case and also considering the period of incarceration already undergone by the petitioners, I am of the considered opinion that no purpose would be served by keeping them inside jail, especially, when trial is progressing at a very slow speed, inasmuch as, out of 32 prosecution witnesses, none has been examined so far. Accordingly, I deem it appropriate to enlarge the petitioner(s) on bail to the satisfaction of the trial Court.

In view of the aforementioned facts and circumstances of the case and the submissions made by the respective learned counsel, the aforementioned petitions are allowed. Petitioner(s), namely, Mohd. Shahvar, Pardeep Kumar, Shah Nazar, Shah Alam Arshad Khan and Mohd. Arshad are ordered to be released on bail in FIR No. 46 dated 06.05.2021, under Sections 188, 278 & 468 IPC; Section 103 of the Trade Marks Act, 1999; Section 43 of the Water (Prevention and Control of Pollution) Act, 1974; Section 7 of the Essential Commodities Act, 1955; Section 3 of the Epidemic Diseases Act, 1897; Sections 53, 54 & 57 of the Disaster Management Act 2005; and Section 27 of the Drugs and Cosmetics Act, 1940, registered at Police Station Chamkaur Sahib, District Rupnagar, Punjab, subject to furnishing of bail/surety bonds by each one of them to the satisfaction of the learned Trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if they are not required in any other case.

It is, however, made clear that petitioners shall not extend any threat or influence on any prosecution witnesses in any manner, directly or indirectly.

Observations made here-in-above shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of evidence available on record.

Still further, in future if petitioners are found involved in any case of similar nature, the respondent-State would be at liberty to take necessary steps for cancellation of bail granted to the petitioners in present case.

These petitions are disposed of in the above terms.

(SANJAY VASHISTH)
JUDGE

September 21, 2022

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Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*