

219 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-43180-2022(O&M)
Date of Decision: 30.11.2022

GAGAN KUMAR CHUGHPetitioner

Versus

STATE OF HARYANA Respondent

CRM-M-49889-2022 (O&M)

NITIN LAMBAPetitioner

Versus

STATE OF HARYANA Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Manjeet Singh, Advocate
for the petitioner in CRM-M-43180-2022.

Mr. Sanjiv Gupta, Advocate
for the petitioner in CRM-M-49889-2022.

Mr. Deepak Sabharwal, Addl. AG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

Both the petitions are taken up together for final disposal with the
consent of learned counsel for the parties since both the petitions arise out of

the same FIR i.e. FIR No.166 dated 15.04.2022 registered under Sections 120-B, 420, 465, 467, 468, 471, 474 IPC, Police Station Sector-14, Panchkula. CRM-M-43180-2022 has been filed by petitioner-Gagan Kumar Chugh seeking grant of anticipatory bail while CRM-M-49889-2022 has been filed by petitioner-Nitin Lamba who seeks grant of regular bail.

The FIR in question came to be lodged on the basis of a complaint made by one Sh. Satpal Garg, Superintendent of Haryana State Pharmacy Council, SCO No. 208, Sector 14 Panchkula, in which he stated that some candidates have applied for the registration as Pharmacist in the Haryana State Pharmacy Council by submitting their certificate of 10+2 and other certificates of qualification. All the candidates who are residents of the State of Haryana have shown that they have passed 10+2 examination from the institution i.e. Board of School and Technical Education, Chhattisgarh. Since the Haryana State Pharmacy Council came to know after scrutiny of documents and qualification certificates that the questioned institute i.e. Board of School and Technical Education, Chhattisgarh was not an approved institute and was not having any recognition as per law at any point of time and, therefore, a fraud has been committed upon the candidates whereby the students have been duped by the Board in this regard. Allegations of mal-practice on the Board have been made.

Mr. Manjeet Singh, Advocate, appearing on behalf of petitioner-Gagan Kumar Chugh has submitted that it is a case where a trust deed (Annexure P-2) was executed on 10th October 2012 in which there were six trustees including the present petitioners namely Gagan Kumar Chugh and Nitin Lamba. The name of the trust is “Board of School and Technical

Education”. The aim and objective of the Board/Trust is *inter alia* to provide basic education for Primary , Higher, Intermediate (10+2), Vocational, Technical, Paramedical, NTT, JBT, CTT, Yoga, Naturopathy etc. Apart from various objectives provided there was also an objective that the Board will enhance Distance Education, Open School Education program all over India and abroad for the convenience of the working students and education as well as exam centers will be established to provide distance education. The basic aim of the board was to provide education by way of admission. On 25.10.2012 vide Annexure P-2, a Trust deed was formulated in District Hisar, within the State of Haryana and was also registered before the Sub-registrar Hisar. On 7th November 2012 (Annexure P-3) the aforesaid Board was granted equivalence status by Board of Secondary Education, Chhattisgarh at Raipur. The said certificate was initially on provisional basis which is clear from aforesaid Annexure P-3. Thereafter the aforesaid equivalence was also granted permanently and the same was published in a booklet of the Chhattisgarh Board of Secondary Education Raipur vide Annexure P-4. Thereafter vide Annexures P-5, P-6 and P-7 the said information was sent to different offices /bodies in this regard.

However on 11th March 2014 the equivalence certificate was suspended by the State Government vide Annexure P-9. This order of suspension was challenged by the Trust before the Chhattisgarh High Court vide Annexure P-10 and vide Annexure P-12 the Chhattisgarh High Court disposed of the said writ petition with certain directions to the Government to issue proper show cause notice to the Trust and thereafter reply was to be filed within the time frame-work. Further direction was issued to state authority to

take a final decision expeditiously. It was also directed that pending such an inquiry and the final order by the State Government of Chhattisgarh, the students who have obtained their qualifications of 10th and 10+2 at a time when valid temporary equivalence subsisted before suspension shall not be disturbed in any manner by the State authorities. It was also directed that any consequential action by the respondent pursuant to the order dated 11th march 2014 stands nullified at this stage. Thereafter in compliance of the aforesaid order, a notice was given by the Chhattisgarh Government and ultimately the equivalence was cancelled by the State Government on 7th March 2015.

The learned counsel for the petitioner has submitted that so far as the present petitioner namely Gagan Kumar Chugh is concerned he was inducted as a founder trustee when the Trust was made but thereafter when the writ petition was filed before the Chhattisgarh High Court he was retired as a trustee of the Board on 18th July 2014 and in support of the same he referred to Annexure P-11 which shows that he had retired. The learned counsel has submitted that thereafter petitioner-Gagan Kumar Chugh had no connection with the Board.

The learned counsel appearing on behalf of petitioner-Gagan Chugh submitted that once the Trust/Board has been granted equivalence by the Chhattisgarh Board of Secondary Education, Raipur then whether the equivalence which was granted was erroneous, perverse or not would not mean that any culpability can be attached to the petitioner and even if the equivalence was ultimately cancelled by the State of Chhattisgarh, no offence is made out so far as petitioner-Gagan Kumar Chugh is concerned because the certificates or admissions of the students and the certificates issued in that

regard were of the period when the equivalence was still in subsistence and the cancellation of the equivalence was not retrospective in nature. He has further submitted that this Court on 19.09.2022 had granted interim bail to the petitioner subject to his joining of investigation and cooperating with the investigation process and in pursuance thereof he has already joined investigation and he has cooperated with the investigation process and therefore prayed that the aforesaid order dated 19.09.2022 be made absolute.

Learned counsel appearing for petitioner-Nitin Lamba, who has prayed for grant of regular bail while supplementing the arguments raised by the learned counsel appearing on behalf of petitioner-Gagan Kumar Chug, has submitted that he is in custody from 28.07.2022 which is about 4 months and investigation qua petitioner-Nitin Lamba has already been completed and thereafter the challan has been presented before the competent Court. He submitted that so far as petitioner-Nitin Lamba is concerned, he is also a founder-trustee at the initial stage and he has continued to be trustee till date. He has submitted that the taking of students for admission or for issuance of certificates is an action which has been performed by the Board and not by the individual person and the petitioner by virtue of being a trustee of the Board cannot said to be solely responsible for any action on the part of Board/Trust. He submitted that once the equivalence has been so approved by the Chhattisgarh Board of Secondary Education, no culpability can be attached to the petitioner for issuance of certificates for granting the admission. He has further categorically submitted that after the equivalence was cancelled by the State of Chhattisgarh on 07.03.2015, no certificate has been issued by the Board/Trust and therefore he may be considered for grant of regular bail.

Learned counsel appearing on behalf of petitioner-Nitin Lamba, has also referred to one letter dated 29.01.2022 which was written by the Assistant Inspector of Police, Headquarter, Panchkula, to the Director of Police, Panchkula whereby it has been stated that so far as the certificates of 123 students who have passed 10+2 examination from the School and Technical Education Board the same has been verified and he has contended that once the certificates have been verified by the Chhattisgarh police, then the Haryana Police has no jurisdiction to re-verify and conduct investigation in this regard.

On the other hand, Mr. Deepak Sabharwal. Addl. AG, Haryana, has vehemently opposed the grant of bail to both the petitioners. He has referred to separate affidavits filed in the petitions for grant of anticipatory bail in CRM-M-43180-2022 and for regular bail in CRM-M-49889-2022 and has also sought information from Mr. Amit Dahiya, Superintendent of Police, Crime, who is also present in the Court.

Learned Addl. A.G. Haryana has submitted that it is a case of large scam which was being operated by both the petitioners and the other co-accused by which they formulated a Board/Trust and got it registered in District Hisar, State of Haryana but got the equivalence certificate from the State of Chhattisgarh. He submitted that although the equivalence remained in operation from the date of grant of equivalence legally w.e.f. 07.11.2012 till the time of its cancellation i.e. 07.03.2015 but it is a case where the Board even after the cancellation of the equivalence by the State of Chhattisgarh continued issuing of certificates to various students by putting a back date from the year 2012 to 2015. He has submitted that during investigation it has

been found that petitioner-Gagan Kumar Chugh is operating a Bombay Institute Center at Abhor and on the basis of investigation conducted, it was found that he was instrumental in issuance of approximately 3300 certificates ranging from the years 2015 to 2022 by taking an amount of approximately Rs.50,000/- on an average, from different students and the Board itself issued certificates on which dates of years from 2012 to 2015 have been mentioned and all these students were the fresh students and were not enrolled with the Board prior to the year 2015. Learned State counsel, on instructions from Amit Dahiya, Superintendent of Police, Crime further submitted that in this way, petitioners namely Gagan Kumar Chugh and Nitin Lamba have been taking money from large number of students regarding even after cancellation of equivalence by Chhattisgarh Government and the figure of 3300 students is only up to the present stage of investigation and the police is now further investigating with regard to much more number of students from whom money was taken. He submitted that the argument which has been raised by the learned counsel for the petitioner in CRM-43180-2022 that he has severed his relations with the Board on 18.7.2014 whereby he was retired (Annexure P-11) but infact thereafter as well he had been continuing with the operations of the Board and during the course of arguments learned State counsel has submitted a photocopy of one resolution which is a resolution of the Board in vernacular dated 29.10.2018 whereby the Board has conducted a meeting in which petitioner-Gagan Kumar Chugh was stated to be a member of the Board.

The learned State counsel has further submitted that the aforesaid position was further investigated on scientific basis by obtaining the I.P.

address of the computers and the mobiles which were seized from petitioner-Nitin Lamba and the software which was being operated by their Software Engineer namely Jasdeep, and on the basis of the I.P. address it has come up that these 3300 certificates have been issued after the years 2015 till 2022 afresh pertaining to those students who had no connection at all with the Board prior to the year 2015 and qua them certificates have been issued on which the years which have been mentioned are from 2012 to 2015 and in this way large section of society has been prejudicially effected by the conduct of the petitioners and the other co-accused by issuance of false and fake certificates.

He further submitted that so far as the letter dated 29.01.2022 as referred by the counsel for the petitioners is concerned, one letter was issued by CIG, Chhattisgarh with regard to 123 students but the said AIG got enquired with regard to the certificates only from petitioner-Nitin Lamba and on the basis of same such letter had been issued and therefore it cannot be said to be a defect upon the investigation being conducted by the Haryana Police.

Learned State counsel has further submitted that although petitioner-Gagan Kumar Chugh has been granted interim bail by this Court and he has joined the investigation once but thereafter when he was recalled, he refused to come and he has not cooperated with the investigation process at all and his joining of investigation was only an empty shell. He further submitted that it is a case where the magnitude of the fraud being committed is very high and the innocent students have been duped by issuing them certificates and for the purpose of elicitation of truth, custodial interrogation of the petitioner is required not only for the purpose of seeking information as to

how many students they have issued the certificates but also for the recovery of various certificates and other documents from petitioner-Gagan Kumar Chugh.

He further submitted that so far as the regular bail application filed by the other petitioner-Nitin Lamba is concerned, although he has remained in custody for 4 months but he being a trustee was actively instrumental in issuance of fake certificates and there is a strong apprehension that in case the petitioner is released on bail, then he may not only abscond from justice but he may even tamper with evidence or may influence the witnesses and he may even repeat the offence.

Learned State counsel also submitted that during investigation it has been found that petitioner-Gagan Kumar Chugh was in constant touch with the other petitioner-Nitin Lamba through WhatsApp messages and the police is now getting the messages retrieved and the investigation of the case is still in progress and in that regard even an SIT has been constituted.

I have heard the learned counsel for the parties.

It is a case where the allegations against both the petitioners were that they being trustees of the Board which was incorporated in the State of Haryana but they got equivalence from the State of Chhattisgarh for the purpose of providing education to various sections of society. The Board of Chhattisgarh granted equivalence but thereafter the same was suspended by the State of Chhattisgarh and ultimately the equivalence was cancelled and equivalence was valid from 07.11.2012 till 07.03.2015. The argument which has been raised by both the learned counsel for the petitioners was that once the equivalence was granted by the competent authority then even

though assuming it was an erroneous or perverse action of the Board but the petitioners cannot be said to be at fault since the equivalence was granted by a competent authority and therefore, no culpability can be attached to the petitioners. However, the argument of learned State counsel was that it is not a case that during the period of 2012 to 2015 that the action was attached with the element of culpability only but it is a case where even after the cancellation in the year 2015, both the petitioners have been actively instrumental in generating fresh fake certificates after the year 2015 till 2022 and as per learned State Counsel, 3300 certificates have been released till date and on scientific basis by linking the I.P. address and further the investigation by the SIT is in progress for retrieving all the other certificates which according to learned State counsel are very large in number. Some of the students who belong to the State of Haryana were issued certificates and therefore the Haryana police is investigating the matter although the equivalence has been granted by the Board of Chhattisgarh.

After hearing the learned counsel for the parties, this Court is of the view that without going into the merits of the controversies and only for the purpose of considering the application for granting the anticipatory bail in CRM-M-43180-2022 and regular bail in CRM-M-49889-2022 the Court has to strike a balance between the liberty of individual on one hand and on the other hand the other factors such as reasonable apprehension as to whether in case the petitioners are granted bail then whether they may abscond or they may influence the witnesses or tamper with evidence and also the gravity and magnitude of the offence and the effect on the large section of society etc. On

the basis of aforesaid facts and circumstances, this Court is of the view that considering the gravity, magnitude and the offence having the effect on the large section of society would disentitle both the petitioners for grant of bail. Although parameters for considering anticipatory bail and regular bail are different but some parameters also overlap. Strong apprehension has been expressed by learned Addl. A.G. Haryana, on the basis of investigation on scientific basis that since both the petitioners were actively involved inter-se as well as with other co-accused for issuing fake certificates from 2015-2022, there is likelihood that in case bail is granted then they may abscond or influence witnesses or may tamper evidence. Considering the gravity and magnitude of offence, such an apprehension cannot be ignored and thus carries weight.

Consequently, finding no merit in both the petitions, both the petitions are hereby dismissed.

However, anything observed herein above shall not be treated as an expression of opinion on merits of the case & is only meant for the purpose of decision of present petition.

30.11.2022
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(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No