

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(208)

CRM-M-112-2022
Date of decision:- 01.02.2022

Arun

... Petitioner

Versus

Union Territory of Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Nitin Jain, Advocate for the petitioner.

Mr. Anil Kumar Lamdharia, A.P.P., U.T., Chandigarh.

...

SUVIR SEHGAL, J. (ORAL)

Heard through video conferencing.

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail in case FIR No.30 dated 05.06.2021 registered for offences under Section 420 of the Indian Penal Code, 1860, Section 7 of the Essential Commodities Act, 1955 and Section 27 of the Drugs and Cosmetics Act, 1940 (for short “the Act of 1940”) at Police Station Sector 19, Chandigarh, Annexure P-1.

FIR, Annexure P-1, has been registered when on the basis of the secret information, the petitioner was apprehended with twenty injections of 50 mg each of AmBisome (Liposomal Amphotericin B Injection). The allegations in the FIR is that the petitioner did not possess the requisite license and had procured the injections with the intention of selling them at a higher rate. Petitioner was arrested on 07.06.2021.

By making a reference to the license dated 27.03.2017, Annexure P-2, counsel for the petitioner submits that the petitioner is a licensed pharmacist and has the approval under the Act of 1940. Still further, he urges that the injections are meant for treatment of Black Fungal (mucormycosis), which is an aftermath of Covid-19, and have been procured by him vide receipts, Annexure P-4, from Punjab State Aids Control Society on behalf of some patients admitted in Deep Hospital, Ludhiana. Counsel submits that at best, the case of the prosecution is that the petitioner has committed an offence under Section 27 (b) (ii) of the Act of 1940, which is bailable and non-cognizable and entails a minimum punishment of three years extendable upto five years. Still further, he submits that there is a violation of mandatory provision in as much as that the complainant is not the person authorized in terms of Section 32 of the Act of 1940. It is his argument that no offence under Section Section 420, IPC is made out. Counsel submits that the first petition seeking grant of regular bail (CRM-M-26360-2021) was withdrawn from this Court vide order dated 30.09.2021, Annexure P-7, on an application moved on behalf of the petitioner and thereafter the charges have been framed and the trial has started.

Per contra, learned counsel appearing for respondent-U.T., Chandigarh submits that the prosecution possesses sufficient incriminating material against the petitioner, as they have recorded the statements of the alleged patients as well as the representative of the hospital, mentioned in the receipts, Annexure P-4. It is his categorical case that the petitioner was

indulging in black marketing of the injections at the time when the country was in the midst of the second wave of Corona virus Pandemic. As per instructions received by him from, ASI Kirandeep, challan has been presented on 02.08.2021 and charge has been framed against the petitioner on 14.10.2021 under Section 420, IPC and Section 27 read with Section 18 of the Act of 1940. Upon further instructions, he submits that one out of sixteen prosecution witnesses have been examined.

I have considered the submissions of counsel for the parties.

Considering the period of incarceration of the petitioner, which is more than seven months, the nature of allegations against him as well as the fact that he is a licensed pharmacist and the trial is likely to take time to conclude, this Court is, prima facie, of the view that he is entitled to be released on bail.

Petition is allowed.

The petitioner, namely, Arun, is ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned.

Needless to mention, observation have been made above solely for the purposes of the decision of the bail petition and the trial shall be conducted and concluded uninfluenced by any observation made hereinabove.

01.02.2022
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No