

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14104-2022 (O&M)

Date of decision: 26.07.2023

Anil Kumar Kansal

....Petitioner

versus

State through Drug Inspector, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Brijeshwar Singh Bhalla, Advocate for petitioner.

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside the order dated 11.03.2022(Annexure P-2), whereby learned Chief Judicial Magistrate, Ludhiana issued bailable warrants to the petitioner without issuing summoning order in complaint No.COMA/8500/2020 dated 13.10.2020 under Sections 18(a) (i) read with Section 17 (b), Rule 95 and 105 punishable under Section 27 (d) and under Sections 18(C) and 18-A punishable under Section 27(b) (ii) and 28 of Drugs and Cosmetics Act, 1940.

2. It is the case of the petitioner that after institution of the complaint, the complainant did not appear before the learned Chief Judicial Magistrate. This fact is reflected in orders dated 13.10.2020, 25.01.2020 and 11.05.2020 passed by the learned Magistrate. Vide order dated 11.05.2021, the case was adjourned to 19.10.2021 for awaiting the presence of the complainant. On 19.10.2021, the complainant was present in person. However, inadvertently it was recorded that notice issued to the accused has not been received back. Subsequently on 11.03.2022, the impugned order was passed recording that the notice issued to the petitioner (accused) had not been received back served or otherwise, and none has put in appearance on behalf of the accused. It was directed that the accused be served through bailable warrants in the sum of Rs.5000/- each with one surety in the like amount.

3. Learned counsel for the petitioner submits that impugned order appears to have been passed inadvertently. The petitioner has not even been summoned in the said case, hence there was no question of passing of impugned order. He submits that the sections under which notice has been issued to the petitioner are non-bailable and triable by Sessions Court and bailable warrants were issued. If petitioner appears before the Learned Chief Judicial Magistrate, then Chief Judicial Magistrate shall have no other alternative except sending the petitioner behind bars in non-bailable offences.

4. Learned State counsel strenuously opposes the petition and relies on reply, which is already on record. However, he submits that while issuing notice of motion, operation of impugned order was stayed.

5. Arguments heard.

6. On 03.09.2019, an inspection team comprising of Amit Pal Drug Inspector and others inspected the petitioner's premises (M/s Raghav Medicos, near Kalyani Hospital, Moti Bagh, Jagraon, District Ludhiana). He was found stocking 942 liquid plastic bottles of 100 ML each suspected to contain Oxytocin. The bottles had been labelled as "NO.1 Tata Superhit, Nakli Se Savdhan, Patna" bearing blue colour metal sealed caps. They did not bear any batch number, manufacturing date, expiry date and name of manufacturer. Samples were drawn and sealed. Rest of the suspected stock of the liquid plastic bottles was taken into possession. Analysis report from the Government Analyst, Punjab, Chandigarh that the sample was **Oxytocin positive** and the content of **Oxytocin** was **42.32 IU/ml**.

7. As per the complaint, the petitioner is alleged to have committed offences as under:

(i) Section 18(a)(i) read with section 17(b) of the Act and Rules 91/105 of the Drugs and Cosmetics Act, 1945 (hereafter referred to as the Rules) punishable under section 27(d) of the Act with imprisonment upto two years and with fine;

(ii) Section 18c of the Act punishable under section 27(b)(ii) of the Act with imprisonment upto five years and with fine;

(iii) Section 18A of the Act punishable under section 28 of the Act with imprisonment upto one year and with fine.

8. Vide the impugned order dated 11.03.2022, the learned Chief Judicial Magistrate observed that the notice issued to the accused-petitioner by way of RC/AD on 26.10.2021 had not been received back either served or unserved; that the statutory period of 30 days had already elapsed; that the accused had not turned up and, therefore, directed that he be served throughailable warrants in the sum of Rs. 5000/- with one surety in the like amount for 18.04.2022.

9. Vide section 32(2) of the Act, save as otherwise provided therein, no Court inferior to that of the Court of Session shall try an offence punishable under Chapatr IV thereof. Thus, the offences ascribed to the petitioner are triable by the Court of Session.

10. Under Section 2 clause (x) of the Code of Criminal Procedure (hereafter referred to as the Code) “warrant case” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Under the First Schedule to the Code - classification of offences against other laws – than the Indian Penal Code, the offences punishable with imprisonment for 3 years or upwards are categorized as non-bailable.

11. Section 204(1)(b) of the Code provides that if, in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to appear. It is not disputed that the instant case is a warrant case and offence section 18c of the Act attributed to the petitioner is non-bailable since it is punishable under section 27(b)(ii) of the Act with imprisonment up to five years and with fine. Strictly speaking, in my opinion, there is no illegality in the impugned order passed by the learned Chief Judicial Magistrate thereby directing issuance ofailable warrants against the petitioner.

12. The petitioner’s apprehension is that if he appears before the learned Chief Judicial Magistrate, the latter shall have no other alternative except sending him behind the bars in non-bailable offences as the case is triable by the Court of Session.
13. Under section 437 of the Code, when any person accused of or suspected of the commission of any non-bailable offence is arrested or appears before a Court other than the High Court or Court of Session, he may be released on bail except in the situations specified thereunder. Thus, it appears that the learned Chief Judicial Magistrate has the power and discretion to grant bail to the petitioner herein even though the offences are non-bailable and triable by the Court of Session.
14. Taking into consideration the overall facts and circumstances of the case, I am of the opinion that the ends of justice would be met if a direction is issued to the petitioner to appear and move an appropriate application on the next date fixed in case before the learned Chief Judicial Magistrate for grant of bail and the operation of the impugned order is stayed that till disposal of his application by the learned Chief Judicial Magistrate. Ordered accordingly.
15. With these directions, the petition is disposed of.
16. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

26.07.2023

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No