

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

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2023:PHHC:126432

CRM-M-45536-2018 (O&M)

Date of decision: September 25th, 2023

Dr. Jimmy Jindal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Tanu Bedi, Advocate
for the petitioner.

Ms. Trishanjali Sharma, Deputy Advocate General,
Haryana.

MANJARI NEHRU KAUL, J.

The petitioner is seeking the concession of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 in case FIR No.323 dated 05.06.2018 registered under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station City, Fatehabad.

2. Learned counsel for the petitioner has, *inter alia*, submitted that the petitioner is a qualified Psychiatrist, who has been practicing as such, since the year, 2006. As per allegations levelled in the FIR, the petitioner had been illegally storing as many as 12 different types of medicines containing salt of 'Buprenorphine' and thereafter, prescribing and dispensing the same to people, without any authorisation. On receipt of secret information, the Civil Surgeon conducted a raid at the hospital of the petitioner, however, he was not one of the empowered officers to carry out any such raid under Section 42 of the NDPS Act. Still further, there was no provision of law which prohibited the storage and dispensation of medicines containing salt of

'Buprenorphine', by a doctor, who was not running a De-addiction Centre. Hence, no offence much less under the NDPS Act was made out against the petitioner for storing and dispensing the recovered medicines containing salt of 'Buprenorphine'.

3. Learned counsel has further contended that 'Buprenorphine' is classified as a controlled substance under the Drugs and Cosmetics Rules, as Schedule 'H' drug. Though it has also been included as a psychotropic substance under the NDPS Act, however, under the NDPS Act, there is no stipulation that a licence would have to be obtained for storage of psychotropic substances, except those mentioned in Schedule 'I'. Still further, even under Section 65-A of the NDPS Rules, there is no provision for the sale, purchase, consumption of psychotropic substances. Hence, the sale and purchase of the recovered medicines would only be governed by the Drugs and Cosmetics Rules. Furthermore, Rule 66 of the NDPS Rules stipulates that any lawful authorization to possess psychotropic substances is not an offence under the NDPS Act, therefore, possession of medicines containing salt of 'Buprenorphine' by a Registered Medical Practitioner, which the petitioner admittedly is, would not attract any penalty under the NDPS Act.

4. It has thus, been vehemently argued that in the aforementioned facts and circumstances, since the petitioner is a qualified doctor, he had the mandate to store and distribute all medicines including the recovered medicines containing salt of 'Buprenorphine', more so since 'Buprenorphine' was being used as an opioid substitute. While drawing the attention of this Court to a letter dated 24.09.2010 (Annexure 19 B) issued by Drugs Controller General

(India) (hereinafter referred to as 'DCGI'), learned counsel for the petitioner has further asserted that the basis of the registration of the instant FIR against the petitioner emanates from this communication vide which all the State/UT Drug Controllers were communicated that 'Buprenorphine' could be sold only to Drug De-addiction Centres. However, DCGI had no authority to issue the letter in question i.e. letter dated 24.09.2010 (Annexure 19 B) and oddly, a new criminal offence in a self-contained Code like Drugs and Cosmetics Act was being sought to be carved out by way of some internal administrative instructions issued by DCGI, which was unheard of, and could not be permitted.

5. Still further, learned counsel for the petitioner has contended that it is also a matter of record that even after issuance of letter dated 12.11.2014 (Annexure 19 D) by Commissioner, Food & Drugs Administration, Punjab, to the DCGI, no amendment in the Act, much less any notification under Section 26-A of the Drugs and Cosmetics Act, as proposed in this letter, qua penalization for the sale of medicines containing salt of 'Buprenorphine', outside of De-addiction Centres, had been issued.

6. Learned counsel has vehemently maintained that since the petitioner has been a practicing Psychiatrist for almost 17 years, he not only could store but also prescribe medicines containing salt of 'Buprenorphine' to his patients, after maintaining proper records as mandated under Rule 123 of the Drugs and Cosmetics Rules. A prayer has, therefore, been made that as the recovery already stands effected from the hospital of the petitioner and he has joined investigation in compliance of order dated 23.10.2018 passed by this Court, his

custodial interrogation would serve no useful purpose. Hence, the interim order dated 23.10.2018 passed by this Court be made absolute.

7. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite has, inter alia, submitted that when the raid was carried out at the hospital of the petitioner, a huge recovery of medicines containing 'Buprenorphine' was effected from there. All the recovered medicines were banned under the NDPS Act and were being illegally sold by the petitioner.

8. Learned State counsel while drawing the attention of this Court to the affidavit dated 04.12.2018 of Shri Dharambir, Deputy Superintendent of Police, Fatehabad, has further asserted that the medicines recovered from the petitioner were psychotropic substances, which could have been only stored and dispensed by a licenced Drug De-addiction Centre. However, admittedly the petitioner did not have any licence, which was a mandatory requirement for storing or dispensing the recovered drugs. Furthermore, it was not even the case of the petitioner that at the time of the raid or even prior thereto, he had applied for a licence to keep the recovered drugs at his hospital. Learned State counsel has submitted that in view of the recovery of banned psychotropic substances from the hospital of the petitioner, he did not deserve to be extended the concession of anticipatory bail as it was abundantly clear that the petitioner, under the garb of being a Psychiatrist, had been supplying banned drugs to the public. Learned State counsel has thus, prayed for the dismissal of the petition as the custodial interrogation of the petitioner is required to know the mode and manner adopted by him to procure the recovered drugs, which could not have been otherwise sold or supplied to him, in

normal course and were meant for supply only to De-addiction Centres.

9. I have heard learned counsel for the parties and perused the relevant material on record.

10. Learned counsel for the petitioner, during the course of arguments, laid a great deal of stress that being a doctor, 'Buprenorphine' as well as other drugs containing its salts was being prescribed and dispensed by him to his patients, as an opioid substitute. Thus, it is obvious that the petitioner has indeed been using the drugs for the purpose of de-addiction. If that be the case, it was mandatory for the petitioner to have registered his hospital as De-addiction Centre, which concededly had not been done by the petitioner, either when the raid in question was conducted at his hospital or anytime prior thereto.

11. In the above background, it would be apposite to refer to the relevant part of the communication of DCGI, dated 12.08.2013, to all the States and U.T. Drug Controllers, which prior to its amendment dated 28.03.2019 read as under:-

"The preparation shall be supplied only to the designated De-addiction centres set up by the Govt. of India funded by the Ministry of Health and Ministry of Social Justice & Empowerment and Hospitals with De-addiction facilities and a list of the centres to whom supply of the drug is made should be made to the office of Drugs Controller General (I) periodically indicating the quantity supplied to each centres."

12. The FIR in question came to be registered on 05.06.2018 after a secret information had been received that the petitioner was illegally storing and dispensing medicines containing salt of 'Buprenorphine' in his hospital. Prior thereto, the following notification of the Haryana Government dated 16.01.2018 was issued.

3. In the said rules, in rule 6, in sub-rule (3),-

(i) for clause (v), the following clause shall be substituted, namely:-

“(v) a license shall be valid for a period of three years from the date of issue unless suspended, revoked or cancelled by the Licensing authority;”;

(ii) for clause (viii), the following clause shall be substituted namely:-

“(viii) the Psychiatry Nursing Homes or Hospitals which are holding License under the Mental Health Act, 1987 (Central Act 14 of 1987) and the Central Mental Health Authority Rules, 1990 and are providing treatment and care to substance dependents, shall be exempted from obtaining Licence. They shall be governed under the provisions of the Mental Health Act, 1987 (Central Act 14 of 1987), however, they **shall** have to get themselves registered with the Licensing authority and submit data on de-addiction cases in the prescribed proforma i.e. Drug Abuse Monitoring System. They shall also be under the purview of the District Level Committee as regards monitoring supervision and inspection;”.

13. Therefore, in view of the words ‘shall’ and ‘only’ used in the letter dated 12.08.2013 of DCGI and Notification dated 16.01.2018 of the Government of Haryana, it was mandatory for the petitioner to have applied for a licence for running a De-addiction Centre, as the recovered medicines could be only stored and in turn sold by a De-addiction Centre only.

14. In the facts and circumstances, *prima facie* the petitioner had illegally stored the recovered drugs in his Hospital. This Court in view of the allegations and recoveries allegedly effected from the hospital of the petitioner, does not deem it fit to extend the extraordinary concession of anticipatory bail to him. This Court concurs with the submissions made by the State counsel that the custodial interrogation of the petitioner would be required to ascertain the mode and manner in which he has been able to procure the banned drugs.

15. As a sequel to the above, the instant petition stands dismissed.

16. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

17. Before parting, it needs to be pointed out that interim bail was granted to the petitioner vide order dated 23.10.2018, thereafter reply by the State was filed on 05.12.2018. However, repeated adjournments were sought by the petitioner, which is apparent from all the previous orders and thus, the case was never argued. The State would be well advised that in petitions seeking anticipatory bail under Section 438 Cr.P.C. or regular bail under Section 439 Cr.P.C., where there is an interim order in operation and that too for years together, like the one in hand, the State has a moral obligation, being officers of the Court, to render proper assistance by bringing it to the notice of the Court, that under the garb of interim protection, repeated adjournments are being sought on some pretext or the other. *Prima facie*, it appears that even in the instant case, because of the interim protection,

investigation against the petitioner has virtually been stalled.

18. This order be communicated to the learned Advocate General of the State of Punjab and Haryana, as well as the Public Prosecutor, U.T. Chandigarh.

September 25th, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No