

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47808-2022 (O&M)

Date of Decision: 18.01.2023

Reserved on: 11.01.2023

Mohit Sawhney and another

...Petitioners

Versus

State of Haryana through Directorate of Revenue Intelligence

..Respondent

CORAM:- HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.APS Deol, Senior Advocate with
Mr.Vishal Lamba, Advocate for the petitioners

Mr.Saurabh Goel, Senior Standing Counsel with
Mr.Shivam Sahni, Advocate and
Mr.Tej Bahadur, Advocate for respondent/complainant

CRM-48982-2022

This is an application for placing on record additional reply.

The application is allowed as prayed for.

CRM-M-47808-2022

1. The petitioners have approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail in case File No. DRI/DZU/34/ENG-14/2022 dated 26.7.2022 under Sections 9, 25, 25-A, 27-A, 28 and 29 of the NDPS Act (for short “the Act”).

2. The case of the prosecution in brief is that an intelligence input was received vide F.No. DRI/HZU/SIC/INT/01/2022 dated 26.7.2022 from the Additional Director General, Directorate of Revenue Intelligence, Hyderabad Zonal Unit, about clandestine manufacturing of Ephedrine/Pseudoephedrine or Mephedrone in Shree Murlidhar Industries Village Bapoli, Tehsil Radaur, District Yamuna Nagar, Haryana by leasing of Glass Lined Reactors (GLRs) installed in the said factory. The manufacturing started in the afternoon on 22.7.2022 and the

process was expected to be completed in 6 days, in batches of two. About 7 Mts of various types of raw materials had been procured by using fake invoices to manufacture 500/600 Kgs. of Ephedrine/Pseudoephedrine or Mephedrone. Acting on the aforesaid information, searches were conducted by the Officers of DRI, DZU. According to Panchnama dated 29/31.7.2022, 661.75 kgs of ephedrine in wet form valued in the grey market at Rs.132.35 crores and raw material of ephedrine valued at Rs.53 lakhs was recovered from the aforesaid Shree Murlidhar Industries. During search of Room No.203 of Daawat Hotel, Ladwa, Yamuna Nagar Road, Ladwa Kurukshetra, accused, namely, Wafadar Gajanafar Husain and Mohammad Azam were found staying in the Hotel. They were joined in the search of the premises of the factory with the DRI team. Search alongwith officers of GCST, Yamuna Nagar was conducted at the residential premises of **Vijay Sharma (petitioner no.2 herein)** and documents were resumed from the premises, but said **Vijay Sharma** was not available in his residence. On searching the premises of **Shri Mohit Sawhney (petitioner no.1 herein)**, partner of Shree Murlidhar Industries on 30.7.2022, said premises were found locked. Search of the premises of Shri Rajan Sondhi 52/75-A, Thapar Colony, near MLN College, Yamuna Nagar, Haryana was conducted on 31.8.2022, but he was found absconding from his home for more than a month. Thereafter, search of the premises of Shyam Lal Goyal, 663, Kharar Sunny Enclave, Sahibjada Ajeet Singh Nagar, Punjab was conducted on 31.8.2022, but he was also found absconding from his home for more than a month. It has been stated that 10 plastic drums (open drums) containing ephedrine in wet form, brown in colour with heavy crystalline settings at the bottom in one place and

other goods/drums/containers of different sizes were kept at a separate place in the factory premises. It has further been stated that upon taking a very small quantity of both dry and wet material from one of the drums containing Ephedrine in wet form and testing with Precursor Chemical Detection Kit available with them, material indicated the presence of ephedrine. Thereafter, small quantity of materials was taken one by one from all the remaining 9 drums and upon testing with the aforesaid Kit, presence of ephedrine (a controlled substance) was detected in all the tests. The Officers of DRI poured one by one the ephedrine in wet form brown in colour with heavy crystalline settings in empty and clean blue colour drums with lid so that same can be sealed properly and goods would not be tampered without breaking the seal. 10 Drums containing ephedrine in wet form as semi solid material in brown colour with heavy crystalline and 10 open drums containing total 661.75 kgs of ephedrine in wet form as semi solid material was recovered and as per the test report conducted with the help of Precursor Chemical Detection Kit, position indicated that ephedrine in wet form, brown in colour with heavy crystalline is a controlled substance and covered under the NDPS Act. The residue left over after processing of ephedrine of the Panchnama dated 29 to 31 July, 2022, drawn at Murlidhar Industries. Manufacturing equipment i.e. 3 glass line reactors 3 MS reacotrs, 1 Boiler Plant, Chiller Plant, RO Plant, Coolant Tower, Centrfuge Machine, Condenser filter tank, dryer machine, grinder is affixed in the factory and is not practicable to seize the said equipment, which are liable to be confiscated. Jaswinder Singh Supervisor of Shree Murlidhar Industries was served with an order not to remove, part with or otherwise deal with the goods except with the permission of seizing officer. It has

further been submitted that proceedings under Section 52-A of the NDPS Act were conducted in the presence of Judicial Magistrate 1st Class, Jagadhri and representative samples in duplicates were withdrawn for testing. As per the report of CRCL, New Delhi, the samples under reference have been found to be “*positive*” for “*Mephedrone*” which is included in the schedule of the Act.

3. Learned senior counsel for the petitioners, *inter alia*, contends that the petitioners have been falsely implicated in the present case. In fact Shree Murlidhar Industries had been dealing in the business of manufacturing of chlorinated parafin wax/plasticizers and other chemicals which are established from the installation of boiler plant, chiller plant and RO plant etc. are not indication of manufacture of any pharma products and also from No Objection Certificate dated 23.10.2020 (Annexure P-6) issued by the Haryana State Pollution Control Board for manufacturing the aforesaid chemicals. From a perusal of partnership deed dated 1.2.2019 (Annexure P-5), it would be crystal clear that there are 5 partners, namely, **Mohit Sawhney (petitioner no.1), Vijay Kumar (petitioner no.2), co-accused Rajan Sodhi and Shyam Lal Goyal (who are already in custody)** and Manish Sawhney (since died). The premises of Shree Murlidhar Industries was lying defunct due to COVID pandemic. It was only on 22.7.2022, the said premises of Shree Murlidhar Industries was taken on lease by Wafadar Gajanafar Husain and Mohmd. Azam alongwith Raju Bhai and lease was yet to be executed and prior to that the premises was raided on 29.7.2022 and therefore, no lease could be executed. Thus, the petitioners under a bona fide belief that the premises was being used for lawful purposes never bothered to peep into their activities. The premises was given on

lease basis for a sum of Rs.10.00 lacs by co-accused-partners who are in custody. The petitioners did not receive any amount of the said consideration of Rs.10.00 lacs and neither they had any prior knowledge about the activity of the lessee.

4. Learned Sr. Counsel for the petitioners submits that there is no evidence on record to establish that the premises of Shree Murlidhar Industries was knowingly permitted to be used for commission of offence punishable under the Act or the petitioners had any knowledge regarding commission of any offence under the Act and thus no prima facie offence under Sections 25/25-A of the Act is made out against the petitioners. Moreover there is no evidence for invoking the offence under Section 27-A of the Act for financing illicit trafficking and harbouring. There is nothing to show that the petitioners ever indulged in financing illicit trafficking and harbouring directly or indirectly in any of the activities specifically under Sub-Section (i) to (v) of Section 2 of the Act. Learned Sr. Counsel further submits that the statements made by co-accused recorded under Section 67 of the Act are not admissible in the eyes of law as it has been recorded under coercion.

5. Learned Senior counsel for the petitioners further submits that rigor of Section 37 of the Act cannot be invoked to obstruct grant of anticipatory bail to the petitioners in the present case. Moreover, recovery has already been made and nothing is to be recovered from the petitioners. As such custodial interrogation of the petitioners is not required. The petitioners are already ready and willing to join the investigation. In support of his above submissions, learned Sr. Counsel relies on **Tofan Singh vs. State of Tamil Nadu, 2021 (1) RCR**

(Criminal) 1 and State by (NCB) Bengaluru vs. Pallulabid Ahmad

Arimutta & Another, 2022 (1) RCR (Criminal) 762.

6. *Per contra*, learned senior counsel for the respondent/complainant vehemently opposes the grant of concession of anticipatory bail to the petitioners. The petitioners have been specifically named and specific role has been attributed to them in the present case. The petitioners are some of the partners of Shree Murlidhar Industries from where 661.75 kgs of ephedrine in wet form grey market value of Rs.132.35 crores and raw material of ephedrine valued at Rs.53 lacs, was recovered. Further there is no rent agreement between the partners of the factory and co-accused Mohammad Azam, Wafadar Hussain and Raju alias Santosh Singh. In the present case, the amount was paid through *hawala*. Statements of co-accused have been recorded under Section 67 of the Act by the Intelligence Officer, Directorate of Revenue Intelligence (DRI), Delhi Zonal Unit. In the statement of co-accused Santosh Singh known as Raju, the complicity of the petitioners and other co-accused with the crime is writ large. The petitioners cannot be granted anticipatory bail, keeping in view the rigor of Section 37 of the Act. Further nature and gravity of offence does not warrant for grant of anticipatory bail to the petitioners. In support of his above submissions, learned Senior Counsel relies on **State of M.P. vs. Kajad, (2001) 7 SCC 673, Union of India vs. Shiv Shanker Kesari, (2007) 7 SCC 798, Collector of Customs, New Delhi vs. Ahmadalieva Nodira, (2004) 3 SCC 549, Union of India vs. Mahaboob Alam, (2004) 4 SCC 105, Babua alias Tazmul Hossain vs. State of Orissa, (2001) 2 SCC 566, Satpal Singh vs. State of Punjab, Law Finder Doc Id # 998909, Maktool Singh Vs. State of Punjab (1999 (3) SCC 321 etc.**

7. I have heard learned Senior Counsel for the parties and

perused the record.

8. Before advertent to the present case, it would be apt for this Court firstly to deal with the rigor of Section 37 of the Act. Section 37 of the Act reads as under:-

“37. Offences to be cognizable and non-bailable-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 -

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act 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.

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

9. In **Maktool Singh, supra**, Hon'ble Supreme Court considered the scope of Section 37 along with the scheme of the Act and held:

"17. The only offences exempted from the purview of the aforesaid rigors on the bail provisions are those under Sections 26 and 27 of the Act. The former is punishable upto a maximum imprisonment for three years and the latter upto a maximum imprisonment for one year. For all other offences, the court's power to release an accused on bail during the period before conviction has been thus drastically curtailed by providing that if the Public Prosecutor opposes

the bail application, no accused shall be released on bail, unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence."

10. The purpose for which the Act was enacted and the menace of drug trafficking which intends to curtail is evident from its scheme. The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty. Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion. Liberal approach in the matter of bail under the Act is uncalled for. The aforesaid view of mine finds support from the judgment of Hon'ble Supreme Court in **Shiv Shanker Kesari, supra**.

11. Now advertent to the present case, the petitioners are sought to be implicated under Sections 9, 25, 25-A, 27-A, 28 and 29 of the NDPS Act. The allegations against the petitioners are that on the basis of intelligence input and further search of Room No.203 of Daawat Hotel, Ladwa, Yamuna Nagar Road, Ladwa Kurukshetra, accused, namely, Wafadar Gajanafar Husain and Mohammad Azam were found staying in the Hotel. They were joined in search of the premises of the factory with the DRI team. 661.75 kg of ephedrine in wet form valued in the grey market at Rs.132.35 crores and raw material of ephedrine

valued at Rs.53 lakhs were alleged to have been recovered from Shree

Murlidhar Industries which belonged to the petitioners being some of the partners. During search at the factory of Shree Murlidhar Industries on 29/31.7.2022, 10 plastic drums (open drums) which were found containing Ephedrine (which later on testing by CRCL, tested positive for Mephedrone, a NDPS substance under Schedule to NDPS Act) in wet form, brown in colour with heavy crystalline settings at the bottom at one place and the other goods/drums/containers of different sizes were kept at a separate place in the factory premises. On testing, the material indicated the presence of ephedrine. The DRI officer, therefore, on a reasonable belief seized the said 10 drums under the Act and kept the same at Malkhana of Radaur Police Station for safe custody. Further more, manufacturing equipment viz. 3 Glass Line Reactors, 3 MS Reactors, Boiler Plant, Chiller Plant, RO Plant, Coolan Tower, Centrifuge Machine, Condenser, Filter Tank, Dryer Machine, Grinder were installed in the factory and it was not practicable to move the manufacturing equipment from factory premises, which though appear liable for confiscation under the NDPS Act. Therefore, the said manufacturing equipments were seized and handed over to Jaswinder Singh, Supervisor of Shree Murlidhar Industries with an order that he shall not remove, part with or otherwise deal with the goods, except with the prior permission of competent authority under Section 45 of the Act. Learned counsel submits that proceedings under Section 52A of the Act were conducted by and in the presence of 1st Class Magistrate, Jagadhari during which two representative samples from each of 10 drums were withdrawn for testing in the presence of Legal Aid Counsel. Therefore, a total two sets of samples Set-A and Set-B having samples each of the 10 drums were withdrawn. The samples were sent to CRCL vide Test

Memo Nos.87 of 2022 to 96 of 2022, for testing. In response, the CRCL, New Delhi vide test reports F.No. 1/ND/R/2022/CLD (N) all dated 16.9.2022 stated that ***“The sample is in the form of yellowish moist lumps. On the basis of Chemical, Chromatographic and Spectroscopic examinations, it is concluded that the same under reference answers positive test for Mephedrone.”*** Mephedrone is a narcotics substance included in the schedule of the Act.

12. On 29.7.2022, search was conducted at the residential premises of petitioner no.2 (one of the partners of Shree Murlidhar Industries) and resumed documents from the premises, but petitioner no.2 has been absconding since then. On 30.7.2022, search was also conducted at the residence of petitioner no.1- Mohit Sawhney (one of the partners of Shree Murlidhar Industries). The premises of petitioner no.1 was found to be locked and he has been absconding since then.

13. The plea of the petitioners that the said factory was leased out to the accused persons, namely, Mohammad Azam, Wafadar Hussain and Raju alias Santosh Singh is not established at this stage in the absence of rent agreement between the petitioners and the other co-accused. There is no rent agreement on record to show that the aforesaid factory was leased out by the petitioners or other partners of the factory to co-accused Mohammad Azam, Wafadar Hussain and Raju alias Santosh Singh. The statement of co-accused Santosh Singh known as Raju was recorded under Section 67 of the Act wherein he has stated that in the month of May or June, 2022, Azam and Wafadar met him in Mumbai and they planned to manufacture Mephedrone in large quantity (350 kgs) in the factory of Shree Murlidhar Industries and they also settled their shares. Accordingly, he told them the raw materials and

quantity required for manufacturing of Mephedrone. In the month of July, 2022, Azam had told him that he had arranged the raw materials in the factory of Shree Murlidhar Industries, and therefore, he also reached Ladwa and stayed in Solitaire Hotel located on Ladwa-Radaur Road, near Ladwa. Mohammad Azam and Wafadar were staying in Daawal Hotel located on the same road near Ladwa. In July, 2022 when he was manufacturing Mephedrone in their factory, petitioners- Mohit Sawhney and Vijay Kumar had come to meet them in the factory of Shree Murlidhar Industries for negotiating money to be paid to them for manufacturing Ephedrine in their factory. He stated that he, alongwith other co-accused Azam and Wafadar had met the petitioners in the office located in the factory. During meeting petitioners had agreed to take Rs.10 lacs per 100 Kgs Mephedrone being manufactured by them in the factory of the petitioners. After two-three days of the meetings, co-accused Raju had got transferred Rs.10 lacs to petitioner no.2 through *angadia/hawala*. Since more money was required to be paid to them, Raju had left for Lucknow for arranging money to be paid to petitioners. On 29.7.2022, co-accused Raju had arranged transfer of Rs.5.00 lacs through *hawala* to co-accused Azam who had sent Raju a photo of currency note as token for collecting the said cash payment of Rs.5.00 lacs from *angadia/hawala* of Yamunanagar.

14. The judgments relied upon by the learned Senior counsel for the petitioners are on different footings and not applicable to the facts and circumstances of the present case, in view of law laid down by the Hon'ble Supreme Court in **State of Haryana vs Samarth Kumar, 2022 Live Law (SC) 622**. In **Samrath Kumar's** case (supra), the Hon'ble Supreme Court observed as under:-

*“In cases of this nature, the respondent may be able to take advantage of the decision in **Tofan Singh vs State of Tamil Nadu (supra)**, perhaps at the time of arguing the regular bail application or at the time of final hearing after the conclusion of the trial. To grant anticipatory bail in case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondent.”*

15. In view of Section 37 (1) (b) of the Act unless there are reasonable grounds for believing that the accused is not guilty of such offences and that he is not likely to commit any offence while on anticipatory bail, will alone entitle him to bail. In the present case, the petitioners have tried to secure anticipatory bail on various grounds which are insignificant. There are statements of co-accused recorded under Section 67 of the Act by the Intelligence Officer, Directorate of Revenue Intelligence (DRI), Delhi Zonal Unit. At this juncture, the case of prosecution is at initial stage of investigation and the petitioners have been absconding for a long time. The petitioners have been specifically named in the case at hand and specific role has been attributed to them. It is prima facie evident that the petitioners were providing logistic support for illegal manufacturing of Mephedrone and the payment in lieu of manufacturing of Mephedrone in the said factory was made through *hawala* channel to the petitioners. It is further revealed that the petitioners had made the payments in cash for purchasing raw materials i.e. Bromine for manufacturing Mephedrone on the invoices issued in the name of Shree Murlidhar Industries.

16. Apart from that, the other aspect to be borne in mind is that the liberty of a citizen has got to be balanced with the interest of society.

The organized activities of the underworld and the clandestine manufacturing of narcotic drugs and psychotropic substances and illegal trafficking in such drugs and substances have led to deep rooted problems of drug addiction among a sizeable section of the public, particularly the adolescents and students and the menace has assumed serious and alarming proportions in the recent years, which needs to be curbed with an iron hand. In such cases where manufacturing of heavy commercial quantity of narcotic drugs and psychotropic substances are involved, it cannot be said that the accused would not indulge in such activities which are lethal to the society.

17. Applying the aforesaid ratio law laid down by the Hon'ble Supreme Court to the glaring peculiar facts and circumstances of the present case; and more particularly, the material on record, gravity and seriousness of the offence, prima facie involvement and complicity of the petitioners, I am of the considered view that I do not find any trigger point warranting interference by this Court to grant concession of anticipatory bail to the petitioners.

18. In view of the above, these petitions are dismissed. Misc. application(s) if any, pending in these matters shall stand disposed of accordingly. Nothing said here-in-above shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

18.01.2023

MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes