

CRM-M-41211-2023 (O&M)
CRM-M-45222-2023 (O&M)

Neutral Citation No. 2024:PHHC:031513
Neutral Citation No. 2024:PHHC:031515

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: February 29, 2024
Pronounced on: March 05, 2024

I. CRM-M-41211-2023 (O&M)

Priyanshu Garg alias Priyanshu ...Petitioner

Versus

State of Punjab ...Respondent

II. CRM-M-45222-2023 (O&M)

Sahil Pahwa ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: - Mr. Siddharth Gupta, Advocate for the petitioner
in CRM-M-41211-2023.

Mr. Pankaj Garg, Advocate for the petitioner
in CRM-M-45222-2023.

Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

This order shall dispose of two petitions titled above, both
filed under Section 439 Cr.P.C. Petitioners pray for their release on regular
bail in a case arising out of FIR No.0091 dated 06.05.2023, under Sections
22 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for
short 'the NDPS Act'), registered at Police Station City Sangrur, District
Sangrur.

2.1 The allegations, as culled out from the status report filed by respondent-State, are that on 06.05.2023 at about 4.40 p.m., ASI Kulwinder Singh of P.S. City Sangrur received a secret information against Priyanshu Garg (*petitioner in CRM-M-41211-2023*) running a shop in the name and style of Shri Ganesh Medicos at Kishanpura, Sangrur, to the effect that he used to sell intoxicating tablets to various people and that Sahil Pahwa (*petitioner in CRM-M-45222-2023*) used to supply the same to him. The secret information was also to the effect that on that day, Sahil Pahwa will come to the Medical Store of Priyanshu Garg to supply the drugs and that if the raid is conducted, they could be apprehended with the intoxicating tablets. Finding the information to be reliable, ruqqa was sent to the police station, resulting into the registration of the FIR (Annexure P-1), which was lodged at about 6.46 p.m.

2.2 Further prosecution case is that on the request of ASI Kulwinder Singh, S.I. Balkar Singh & ASI Sukhwinder Singh alongwith other police officials joined him. Senior officers were informed, as per Section 42 of the NDPS Act. Drug Inspector was joined in the police party. Then, the said police party accompanied by the Drug Inspector reached Shri Ganesh Medicos, where two young persons were found sitting, who disclosed their names as Priyanshu Garg and Sahil Pahwa. On opening of the wooden counter in front of petitioner Priyanshu Garg, various intoxicating tablets were found. On counting, 21000 tablets of Alprazolam contained in 28 boxes each containing 50 strips of 15 tablets each; and 1800 intoxicating tablets mark Clidinium Bromide, Chlordiazepoxide &

Dicyclomine HCL of different batches were recovered. The accused could not produce any bill or documents to keep the said intoxicating tablets in their possession. The contraband was taken into possession by way of separate parcels. Both the accused were arrested. Proceedings under Section 52-A of the NDPS Act were complied.

2.3 On 09.05.2023, during questioning, Sahil Pahwa disclosed that he used to purchase the contraband from Gautam, resident of Delhi. Said Gautam was arrested on 28.05.2023 and he nominated one Sunil Kumar of Sunil Pharma to be the main supplier. Said Sunil Kumar was then arrested on 12.06.2023.

3. The two petitioners Priyanshu Garg and Sahil Pahwa, filed present separate petitions, alleging their false implication in the case. Petitioner – Priyanshu Garg pleaded that he was running a licensed pharmacy shop under the name and style of Shri Ganesh Medicos under a licence issued by the Department of Drugs Control, Punjab, valid up to 07.11.2026; that it was not believable that alleged drug supplier Sahil Pahwa would himself sell the tablets to the retailers. It is also contended that no independent witness has been joined and the recovery has been planted. Similar contention is also raised by petitioner – Sahil Pahwa. Both of them also pleaded that co-accused Sunil Kumar has already been allowed bail.

4. Needless to say that learned State counsel opposed both the petitions by pointing out towards the huge recovery of contraband as

effected from petitioner – Priyanshu Garg in the presence of petitioner – Sahil Pahwa, the alleged supplier.

5. During proceedings, petitioner Priyanshu Garg moved application bearing No.CRM-54539-2023 in CRM-M-41211-2023 to place on record certain photographs (11 in number) as Annexure P-6 in order to show his false implication and the falsity of the allegations made by the Investigating Agency. Similarly, petitioner Sahil Pahwa moved application bearing No.CRM-49-2024 in CRM-M-45222-2023 to place on record the copy of video recording as Annexure A-1 and copy of statement of Gaurav Ahuja, as per which petitioner – Sahil Pahwa was working on his shop for the last 2.5 years, as per Annexure A-2.

6.1 By pointing out towards the photographs (Annexure P-6), learned counsel for the petitioner contended that these were taken from the CCTV cameras installed in the neighbourhood; that photograph No.1 and 2 show the installation of CCTV camera near the front shutter of the shop of petitioner Priyanshu Garg and another installed inside the shop of the petitioner. Photograph No.3 reveal the breaking of the ceiling of the shop of the petitioner, so as to remove the DVR of the CCTV cameras by the police, so as to suppress the actual truth. Learned counsel for the petitioner has then drawn attention towards photograph Nos.4 to 8 to contend that these reveal that a white coloured car, without having any registration number, came near the house of the petitioner about 1.30 p.m. on 6.5.2023 and a police official took petitioner – Priyanshu Garg from his house.

Petitioner is visible in white shirt in these photographs, which had been taken from the CCTV installed in the house of the neighbour of the petitioner; whereas the person visible in black T-shirt is the police official. Learned counsel has then drawn attention towards photograph No.9 to contend that co-accused Sahil Pahwa (in turban) was taken into custody at about 3 p.m. by the police official wearing a cap, from another chemist shop, namely New Pharma, where petitioner – Sahil Pahwa was working. Photograph Nos.10 and 11 would then show that the parents of petitioner – Sahil Pahwa reached the chemist shop New Pharma at 4.08 p.m.

6.2 Learned counsel for the petitioners contend that these photographs would clearly demonstrate that the two petitioners had already been taken into custody from two different places by the police and were shown to have been arrested from the shop of petitioner – Priyanshu Garg. Both of them had been apprehended much prior to 4.40 p.m. on 06.05.2023, when the police projected itself to have come into motion on the basis of a secret information. Learned counsel contended further that in case, there is any iota of truth in the allegations made in the FIR, there was no need for the police to remove the DVR of the CCTV camera installed in the shop of petitioner – Priyanshu Garg.

7. Reply to the aforesaid applications was called. Despite availing repeated opportunities, para-wise reply to the aforesaid applications was not filed by the respondent-State. Rather, on 29.02.2024, respondent-State has placed on record the copy of short affidavit of Shri

Manoj Gors, Deputy Superintendent of Police, Sub – Division, Sangrur, stating therein that on perusal of the applications, the matter appeared to be serious in nature and therefore, the Senior Superintendent of Police, District Sangrur had constituted a Special Investigating Team to look into the matter, vide his order dated 20.02.2024 and that said SIT had been asked to submit its report within 30 days.

8.1 On receiving the aforesaid affidavit, learned counsel for the petitioners alleged that reply was not being intentionally filed to the allegations made in the applications and in fact, father of petitioner – Priyanshu Garg was being pressurized to withdraw the application.

8.2 To support this contention, learned counsel has placed on record the affidavit of Shri Vinod Kumar, the father of petitioner – Priyanshu Garg, stating therein that on getting the copy of application bearing No.CRM-54539-2023 by the state, he was called in the office of the Deputy Superintendent of Police, Sangrur and was threatened that he had committed mistake by moving the application and that now, the deponent and his other family members will have to face dire consequences and that another son of petitioner, namely Chirag will also be implicated in different FIRs.

8.3 Learned counsels for the petitioners also submit that the reply to application bearing No.CRM-54539-2023 has not been filed intentionally and that the SIT has been constituted just to gain time. Learned counsel also submits that final report under Section 173 Cr.P.C.

had already been submitted in the Court and therefore, no fresh investigation could have been ordered, without permission from the Higher Court. To support this contention, learned counsel for the petitioners has relied upon “*Vinay Tyagi v. Irshad Ali @ Deepak and others*”, 2013(2) R.C.R.(Criminal) 197.

9. In reply to the aforesaid contentions, learned State counsel submits that the SIT has been constituted, as per order of the Senior Superintendent of Police, Sangrur, in view of the allegations made in CRM-54539-2023, so as to know the truth. However, it is not denied by learned State counsel that final report under Section 173 Cr.P.C. has already been filed.

10. I have considered submissions of both the sides and have appraised the record carefully.

11. As per own case of the prosecution, it is at 4.40 p.m. on 06.05.2023 that ASI Kulwinder Singh had received secret information against the petitioners. FIR was lodged at 6.46 p.m. and only thereafter, the two petitioners were arrested allegedly from the medical shop of petitioner – Priyanshu Garg. However, the said story of the prosecution becomes highly doubtful, in view of the photographs (11 in numbers) (Annexure P-6) placed on record by petitioner – Priyanshu Garg in CRM-54539 -2023, indicating that petitioner – Priyanshu Garg was apprehended from his house at about 1.30 p.m. on that day, whereas petitioner – Sahil Pahwa was apprehended from another chemist shop, i.e. New Pharma at

about 3 p.m. on that day.

12. Having regard to the aforesaid facts and circumstances, the false implication as alleged by the petitioners cannot be ruled out. Therefore, without commenting anything further on the merits of the case, both the petitioners are admitted to bail and are ordered to be released on bail on their furnishing requisite bail bonds and surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate concerned, on usual terms and conditions.

13. Both the petitions are allowed. The accompanied application(s) also stand disposed of.

14. At the same time, after noticing the allegations as made in CRM-54539-2023 and also considering the affidavit of Shri Vinod Kumar, father of petitioner – Priyanshu Garg, it is directed that fresh investigation be conducted by a higher police officer not below the rank of Senior Superintendent of Police, to be deputed by D.G.P., Punjab under the direct supervision of the Director General of Police, Punjab. The said direction is being given in view of the legal position as explained by Hon'ble Supreme Court in **Vinay Tyagi's** case (*supra*), wherein it has been held that fresh investigation may be ordered by the Higher Court, where investigation *ex facie* appears to be unfair and tainted. The principle of rarest of rare cases squarely applies to present case.

15. As such, it is directed that the fresh investigation report, by taking into account the facts disclosed in CRM-54349-2023 in CRM-M-

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41211-2023 and application bearing No.CRM-49-2024 in CRM-M-45222-2023 and the affidavit of Shri Vinod Kumar, father of petitioner – Priyanshu Garg, shall be submitted after conducting the investigation in the light of this order by an officer not below the rank of Senior Superintendent of Police and after the same is approved by Director General of Police, Punjab. It is also directed that none of the earlier officials involved in the investigation of this case, including the Deputy Superintendent of Police, Sangrur, shall be involved in the fresh investigation.

Ordered accordingly. Copy of this order be supplied through Ld. State counsel to all concerned for necessary compliance.

Photocopy of this order be placed on the connected case file.

March 05, 2024
Sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes
Whether reportable:	Yes