* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 06th November 2024***
Pronounced on: 17th December 2024

\+ **BAIL APPLN. 1109/2024**

SHUBHAM MANNA .....Applicant

Through: Mr. Ramesh Gupta, Senior Advocate with Dr. Ajay P. Tushir, Mr. Rahul Saraswat, Mr. Khushwant Dhanda, Mr. Paras Tushir, Mr. Jaswant Rathi and Mr. Vinay Kumar Singh, Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) .....Respondent

Through: Mr. Amit Ahlawat, APP for State with Insp. Kamal Kumar, SI Ashish Kumar, P.S. ISC (Crime Branch), Chanakyapuri.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. The present application has been filed under Section 439 CrPC on behalf of the applicant seeking regular bail in connection with FIR No. 260/2022 under Sections 274/275/276/420/468/471/120-B/34 of the Indian Penal Code, 1860 ("**IPC**") registered at PS Crime Branch, New Delhi; Sections 308/201 IPC were added in the chargesheet. The applicant was arrested on 11th November 2022. The trial is pending before the ASJ Patiala House Court, District-South, Delhi.

The Investigation

2. The case of the prosecution is that on 8th November 2022, information was received regarding one Dr. Pabitra Pradhan, who along with his associates Shubham Manna (the present applicant) and Dr. Anil, was indulging in the manufacturing & selling of spurious life-saving medicines to the patients, suffering from cancer, across India. Investigation ensued on the aforesaid information, and it was revealed that the alleged persons had recently shifted their godown from Neb Saria to Tronika City, Loni, Ghaziabad UP, where on the directions of Dr. Pabitra Pradhan, Shubham Manna (the present applicant) and Dr. Anil, two persons namely Pankaj Bohra & Ankit Sharma @ Bhajji, used to pack spurious medicines, used in treatment of Cancer.

3. On further verification, it was revealed that Dr. Pratibha Pradhan and the present applicant shifted their rented accommodation from Neb Sarai to Noida, were staying in one flat located at Sector 43, Noida, UP and managing all operations from there. It further transpired that at the directions of Dr. Pabitra, his associates namely Pankaj Bohra & Ankit Sharma used to deliver spurious medicines at different locations in Delhi and these persons after arriving at their pre-decided locations in Delhi, used to book them through *'We fast Delivery'* & *'Shri Triputi Balaji Courier'* for delivery across the country.

4. Accordingly, on 10th November 2022, separate teams were constituted to intercept/track the movements of the alleged persons. A team intercepted the movement of one accused person at Bhairon Mandir

Road, near Pragati Maidan, on one scooty No. UP27AZ1457, carrying one bag. Upon interrogation, his identity was established as Pankaj Singh Bohra. On inspection of the bag carried by him, 19 cartons of Tagrisso Tablets and a plastic packing bag, containing boxes of the medicines, were recovered. On further interrogation, he admitted that the recovered medicines are spurious and he disclosed that their godown is situated at B-314, Ground Floor, Back side, Sec-8, Tronica City, Ghaziabad UP. On that day, his other associate Ankit Sharma @ Bajji also, after taking medicines from the godown, went to Doctor Pabitra at Noida, for delivery. The second team apprehended Dr. Pabitra Pradhan and the present applicant along with Ankit Sharma @ Bhaji. From the search of the flat of these persons, spurious cancer medicines of 7 brands were recovered and the same were taken into police possession through seizure memo.

5. On verification, Sh. Amit Kumar, Manager Regulatory Affairs of AstraZeneca Company, in respect of Tagrisso 80 MG (Osimertinib Tab), reported/verified "*Said Sample is COUNTERFEIT and could pose a patient safety risk.*" Accordingly, FIR was registered and all four accused persons were arrested in the present case.

6. During interrogation of the said accused persons, it was revealed that Dr. Pabitra Pradhan had completed his MBBS degree from Hubei University, China in the year 2012. After that, he worked with GTB Hospital, Delhi and Super Specialty Cancer Institute, Delhi as Junior Resident, during which, he came in touch with Dr. Anil Jaiswal, who also worked with GTB Hospital as Junior Resident. One Dr. Rasel, a native of Bangladesh, had also pursued his MBBS from Hubei University, China itself and was one of the batch-mates of accused Dr. Pabitra Pradhan. Dr. Rasel, in the year 2018, came to Delhi and met with

Dr. Pabitra and told him that he used to manufacture spurious medicines, used in the treatment of cancer, and such medicines have a heavy demand in the market and are expensive too. He said that from selling of such spurious medicines, he gains huge profit.

7. Thereafter, accused Dr. Pabitra Pradhan along with his other associates allegedly started manufacturing spurious medicines used in treatment of cancer. In the beginning, for packaging of the spurious medicines, they allegedly used the house of one Aakash Tomar (co-accused) at Krishna Vihar, Loni. It is further alleged that accused persons procured the raw material from different sources and got the tablets and capsules prepared from one Harbir (co-accused) who was a resident of Murthal, Sonipat in Haryana.

8. At the instance of the arrested accused persons, from their godown situated at 314, Sector-8, Tronica City, Loni Ghaziabad, a further recovery of huge quantity of spurious medicines, worth approximately Rs. 4.78 crores, was also effected. On 12th November 2022, co-accused Harbir was arrested in the present case who used to run a manufacturing unit in the name of M/s RMD Biotech at Ganaur, Sonipat. During interrogation, co-accused Harbir disclosed that for manufacturing of spurious medicines, he used Maize Starch powder & Calcium Carbonate and procured the strips & foil printing from Dehradun.

9. Harbir disclosed, that as per the direction and demand of accused Dr. Pabitra, he collected 1 Lakh Incepta Company capsules shells from one Aekansh Verma, Zirakpur, Punjab and out of which, he filled only 13,500 Tablets of Incepta Company in his manufacturing unit. He further disclosed, that for manufacturing the spurious medicines, he used tablet compressor making machine, capsule filling machine & Alu-Alu Packing Machine and that he used to procure the raw material, foil paper, etc. from Sonipat and Ambala in Haryana. A recovery of empty capsules shells of Incepta Company, approximately worth Rs. 80,000/- and tablet compressor making machine, capsule filling machine and Alu-Alu packing machine, was done from the manufacturing unit of co-accused Ram Kumar @ Harbir.

10. On 13th November 2022, at the instance of co-accused Dr. Pabitra Pradhan, other co-accused Aekansh Verma was arrested. He admitted that as per the demand of Dr. Pabitra, he purchased 10 lakh blank Incepta company capsules, from one company based in Indore. Thereafter, co-accused Ram Kumar @ Harbir collected the delivery of 1 lakh capsule shells from him. He also disclosed that he has been in association with Dr. Pabitra for one year and he used to procure Tagrisso 80 Tablets, Tagrix80, Osiment 80 mg etc. medicines, which are used in treatment of cancer patients from co-accused Dr. Pabitra and used to supply the same to the end user/patients. At the instance of Aekansh Verma, 6 boxes of Tagrisso 80mg containing a strip of 10 tablets in each box and two boxes of Palbonix 125 mg containing 21 capsules in each box were recovered from his rented accommodation situated in Zirakpur, Punjab.

11. As per Aekansh Verma, the recovered medicines were supplied to him by the co-accused persons, Dr. Pabitra and others, for supplying the same to end users. As per MRP, a strip of Tagrisso has the cost of Rs. 2,04,000/- and these accused persons by selling the spurious medicines, used to make a huge profit. During, further course of investigation, accused persons namely Prabhat Kumar, Antu Shah, Shahid Hussain Khan, Aakash Singh & Krishna Kumar Pandey @ Gappu have also been arrested in the present case on 14.11.2022, 15.11.2022, 15.11.2022, 26.11.2022 and 27.11.2022, respectively.

12. In the present case, sections 308 and 201 IPC were added and the main chargesheet against the arrested accused persons was submitted in Court on 10th January 2023. After filing of the chargesheet, examination report of the samples taken by the team of Drug Inspectors of Central Government has been received, in which 16 out of 25 samples were declared "*Not of Standard Quality*". Opinion from a Medical Board of AIIMS Hospital has been taken. *Vide* report No. F-2-27/Medical Board/2023-Estt. (H.) dated 10th March 2023, it was opined that "*These medicines may be harmful in view of less efficacy. If efficacy is less and compromised the patients can have progression of cancer or relapse of the cancer. In view of the above, the patient's cancer progresses and/or relapses this may in result in death of patient*".

13. The present applicant's multiple bail applications have been dismissed on earlier occasions. The default bail application of co-accused Dr. Pabitra Pradhan, was rejected by the Supreme Court *vide* order dated 21st November 2023, while observing that, "*Having regard to the nature of the allegations against the petitioner in FIR No. 260/2022, we are not inclined to grant bail to the petitioner and the prayer for bail stands rejected.*"

Analysis

14. The allegations are that the applicant, along with his associates, indulged in manufacturing and selling of spurious life-saving medicines to the patients suffering from cancer across the country. The raiding team apprehended the present applicant along with other co-accused persons, namely, Dr. Pabitra Pradhan and Ankit Sharma, who were residing at Flat No. 207, Second Floor, Chauhan Residency, Sector 45, Noida. Upon search of the said flat, spurious cancer medicines of 7 brands were recovered and the same were taken into police possession through seizure memo.

15. Nominal Roll of the accused arising out of the present FIR shows that the applicant was arrested on 11th November 2022 and has been incarcerated for about 2 years. Other involvements of the applicant are arising out of FIR No. 638/2022 under sections 274/275/276/420/468/471 IPC and 18(a)(i)/27 Drugs and Cosmetics Items Act, 1940, PS Tronica City, Ghaziabad, UP.

16. Bail Application of applicant was dismissed on 6th March 2024 by ASJ-07/PHC/New Delhi, taking into consideration that from the joint possession of present applicant and co-accused Dr. Pabitra and Ankit, spurious medicines were recovered on 10th November 2022, and at the instance of the applicant, additional recovery of spurious medicines was made from Tronica City, Noida, UP worth Rs. 4.78 crores. Account statement of applicant also records number of transactions with multiple customers and co-accused persons, showing active involvement of the applicant in the manufacturing of spurious drugs used for cancer patients. Hence, no grounds for bail were made out and the Sessions Court dismissed the petition.

17. As per status report dated 12th February 2024, applicant is one of the main conspirators, mastermind and kingpin of this crime syndicate and has been running this illegal venture since 2018-2019. The applicant is a B.Tech graduate and was involved in preparation of barcodes, MRP etc. and used to get the boxes of spurious medicines printed from co-accused Shahid Hussain. Applicant procured the details of original cancer medicines and packaging material to manufacture the spurious medicines of the same company, with the help of his associate Ram Kumar @ Harbir. Applicant, along with Dr. Pabitra Pradhan, used to manage all day-to-day activities of this syndicate, including giving separate directions to each of the members for manufacturing, printing of boxes, taking delivery of spurious medicines, further dispatch and delivery of the same to customers and also to aggregate information of the persons in need through *Indiamart* online portal.

18. Account statements of the applicant also reflect a number of transactions with the other co-accused persons and credit from the multiple customers. An amount of Rs. 14.99 Lakh was found in locker of the applicant and the same was frozen.

19. In the opinion of this Court, these acts of the applicant, along with other co-accused persons, of manufacturing spurious medicines and providing false hope by selling these as life-saving drugs, with no active ingredient, and playing with lives of innocent victims, is reprehensible, if so proven, and is a serious threat to society.

20. A Coordinate Bench of this Court in BAIL APPLN. 1375/2024 titled ***Nazish Alvi v State NCT of Delhi***, decision of 9th May 2024, while denying anticipatory bail to the petitioner, held that the allegations of manufacturing, selling, and trading in spurious medicines are serious and a crime against society as a whole. The relevant paragraphs are extracted as under:

> *"10. <u>There is no doubt that the allegations are serious. Manufacturing, selling or trading in spurious medicines is a crime against society as a whole, and in this case going by the allegations, the counterfeit medicines are life-saving drugs and since the medicines are allegedly being sold under the labels of reputed pharmaceutical companies, the chances of the medicines being passed off as genuine, are higher</u>. In Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, (1980) 2 SCC 565, the Constitution Bench of the*

Supreme Court while considering the question of a balance between personal liberty and investigational powers of the police, observed that the nature and seriousness of the charges; events leading up to the charges; apprehension of the applicant fleeing from justice; and larger interest of the public are relevant factors which must be kept in mind by the Court, while granting or denying anticipatory bail."

(emphasis added)

21. A Coordinate Bench of this Court in ***Viphil Jain v State (NCT of Delhi)*** 2024 SCC OnLine Del 6781 while assessing the parameters for grant of bail held that the applicant who was engaged in a racket of manufacture and supply of spurious injections, had experience in the field of pharmacy and was wilfully involved in this life threatening and ill-perceived business. The relevant paragraphs are extracted as under:

"*12. The primary reason as to why this Court granted bail to the other co-accused is that they were only pawns whereas the Petitioner herein is the kingpin of the entire racket. The spurious injections which were primarily being manufactured by the Petitioner herein and were being sold in the market have been found to be of sub-standard quality and are harmful for use. Since the injections have low and compromised efficacy, there were chances that the patients, to whom these injections were given, can have progression or relapse of cancer and these progression and relapse of cancer can also cause death of the patient. The Petitioner, who has experience in the field of pharmacy, was well aware of his act and he was wilfully involved in this life threatening and ill-perceived business. Releasing the Petitioner at this juncture can result in tampering of evidence.*

13. The parameters that have to be considered for grant of bail have been succinctly laid down by the Apex Court and the Courts have to see the following aspects before allowing or rejecting a bail application:

a. nature and gravity of the charge;

b. severity of the punishment in case of conviction;

c. reasonable apprehension of witness being influenced;

d. prima facie or reasonable ground to believe that the accused had committed the offence;

e. character, behaviour, meahns, position and standing of the accused;

f. danger of justice being thwarted by grant of bail.

14. Applying the law laid down by the Apex Court to the facts of the present case, though this Court has granted bail to the co-accused, but the ground of parity cannot be applied to the Petitioner herein as he is the main person who was heading the racket of manufacture and supply of spurious injections. He is aware of the entire network. He knows about all the persons who are involved in this network and the trail of money."

(emphasis added)

22. A Coordinate Bench of this Court in ***State v Parmanand Malhotra & Anr.*** 2006 SCC OnLine Del 20 held that it was shocking even to imagine a person being administered spurious drugs, who is fighting between life and death and that spurious drugs risk the entire society. The relevant paragraphs are extracted as under:

"*15. There cannot be any dispute that the offences under the Drugs and Cosmetics Act are grave. It is shocking even to imagine a person being administered spurious drugs, who is fighting between life and death. The spurious drug destroys even the last chance of a dying man; even when the spurious drugs do not endanger life, they can leave the patient seriously ill for the rest of his life. The inadequate potency also does a bigger harm to the society because of the resistant the patient may develop to the drug. Thus the spurious drug risks the entire society and, therefore, manufacturers and the distributors of the spurious drugs ought to be traced in each case. Merely catching a person* *with the spurious drug can never be considered enough. In other words, source in all cases has to be detected and machines and manufacturing tools are to be seized…*”

(emphasis added)

23. Some aspects of the chargesheet were focused on by senior counsel for the applicant, in defence of the role ascribed to the applicant. It was contended that the applicant in his statement stated that he used to work in Accenture Services Pvt. Ltd. in Bangalore, in the Data Analysis department and then later, in EXL Services Pvt. Ltd., in Gurugram from 2016 to 2020. He stated that Dr. Pabitra was his cousin. In 2020, since he required some money for studies, Dr. Pabitra told him that he will pay expenses and he should keep his accounts and place barcodes on medicine boxes. Applicant therefore, stated that he was essentially involved in scanning, printing, and sharing the barcodes. According to senior counsel for applicant, this aspect was corroborated by Dr. Pabitra, in his statement. It was contended that applicant was merely earning a salary, and therefore, money recovered from him and in his account, could not be used to implicate him.

24. However, this assertion, by the applicant’s counsel, that applicant was merely a helper to his cousin, Dr. Pabitra, and was not consciously involved in the spurious medicines business, is belied by other circumstances revealed during investigation. It is noted as part of the chargesheet, that the applicant had three mobile phones. The CDR analysis showed that through these mobile phones, the applicant was constantly in touch with co-accused Dr. Pabitra, Shahid Hussain, Ankit Sharma, Aekansh Verma, Pankaj, Javed (his employee), and location was found at the place of manufacturing/meeting with accused Ram Kumar at Sonipat, place of packaging at Neb Sarai and Tronica City, Ghaziabad, and place of printing of cartons at Greater Noida. The WhatsApp chats which were extracted, had images and chats pertaining to packaging material of the medicine, photographs of batch numbers printed over strips of medicines, bar codes, injection caps, labels, boxes and instructions for printing, manufacturing of corrugated boxes, as well as, sale and purchase of medicines. Applicant was found to have three bank accounts with multiple transactions with other co-accused and customers. From one of the accounts, he transferred amounts in Gurugram to buy and construct properties. It is alleged that crime proceeds were invested in real estate. Two specific properties were zeroed in at '*Ashiana Silver Crest Uppal's South End*' in Gurugram, which were purchased jointly with one Pankaj Rathore. The investigation revealed that applicant had constructed on these plots, up to four floors.

25. With regard to grant of bail, the following decisions of the Supreme Court are instructive, relevant extracts being as under:

25.1 ***Kalyan Chandra Sarkar v Rajesh Ranjan alias Pappu Yadav & Anr.*** (2004) 7 SCC 528.

> *"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from nonapplication of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*

(a) <u>The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.</u>

(b) <u>Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.</u>

(c) <u>Prima facie satisfaction of the court in support of the charge.</u>

(See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598: 2002 SCC (Cri) 688] and Puranv. Rambilas [(2001) 6 SCC 338: 2001 SCC (Cri)1124].)"

(emphasis added)

25.2 ***State of Maharashtra v Sitaram Popat Vetal*** (2004) 7 SCC 521.

"9. The High Court has lightly brushed aside the factum of recovery of the weapons and identification at the test identification parade. Its conclusion that political rivalry has a double-edged effect was based on surmises without any material before it to show that a false case had been foisted because of political rivalry. <u>Further, the antecedents of the present respondents though noticed were also lightly brushed aside on the ground that they were not of recent past. Even though criminal antecedents are always not determinative of the question whether bail is to be granted, yet their relevance cannot be totally ignored.</u> It was submitted that the accused Sitaram Vetal is not appearing in court on the date fixed. If that is really so, it is open to the trial court to take such action as is available to be taken in law."

(emphasis added)

25.3 ***Prasanta Kumar Sarkar v. Ashis Chatterjee*** (2010) 14 SCC 496.

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this

Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

(emphasis added)

Conclusion

26. Taking into account, *inter alia* ***firstly***, that the applicant appears to be one of the main conspirators and kingpin of this crime syndicate, being run since the years 2018-2019; ***secondly***, that the applicant has not only been engaged in the manufacturing, but also involved in the printing of fake barcodes on boxes of spurious medicines; ***thirdly***, on the instance of the present applicant (along with other co-accused), further recovery of huge quantity of spurious medicines was affected from godown at Tronica City, UP; ***fourthly***, CDR and location of the present applicant is on record and was found at place of manufacturing of these spurious boxes of medicines; ***fifthly***, account statements of the applicant reflect a number of transactions with other co-accused persons and credit from multiple customers, including recovery of an amount of Rs. 14.99 lakhs from the locker of applicant; ***sixthly***, the applicant has invested the crime proceeds in real estate and has properties in Gurugram worth crores of rupees; ***seventhly***, the role of the applicant is different from the rest of the co-accused, as along with being engaged in the manufacturing of medicines, he also was responsible for supply of such spurious life-saving drugs; and ***lastly***, that the applicant has engaged in the act of selling spurious life-saving drugs by placing them with innocent victims, and is a serious threat to society, this Court does not find it a fit case for grant of bail to the applicant.

27. Accordingly, the petition is dismissed. Pending applications, if any, are disposed of as infructuous.

28. Needless to state any observations made above are for the purposes of assessing the bail petition and are not the views of the Court on the merits of the matter.

29. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 17, 2024/NA