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

\+ BAIL APPLN. 2843/2024

NEERAJ CHAUHAN .....Petitioner

Through: Mr. Ankit Verma, Mr. Ram Kishan, Mr. Sachin Verma, Advocates

versus

THE STATE NCT OF DELHI .....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for the State.
SI Ashish Sharma, D-5391, ISC, Crime Branch, Chanakyapuri

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

<u>O R D E R</u>

% **23.08.2024**

1. Petitioner has approached this Court seeking regular bail in FIR No. 59/2024, dated 12.03.2024, registered at Police Station Crime Branch, for offences under Sections 274/275/276/420/468/471/120B/34 IPC. Though the present application has been filed seeking interim bail, the learned Counsel for the Petitioner prays that the present application be treated as one for regular bail.

2. The facts, leading to the present application are that on 09.03.2024 secret information regarding a person, namely, Viphil Jain @ Bablu, procuring empty vials and other raw material for preparing spurious anti-cancer injections such as Keytruda, Opdyta, Opdivo etc., from his associate namely Parvez Malik was received at Crime Branch.

3. It is stated that on the basis of the said information, separate teams

were formed to unearth the whole nexus and nab the culprits. It is stated that since, the information was about a syndicate indulged in manufacturing of spurious medicines, the Drugs Department, Govt. of NCT of Delhi was informed and they were asked to join the team.

4. It is stated that on 11.03.2024, the joint team of Crime Branch and Drugs department conducted a raid at Flat No 1101, Block -2, Eleventh Floor, CSP Units DLF Capital Greens, 15 Shivaji Marg, Moti Nagar, New Delhi 110015, where two persons namely Viphil Jain S/o Late Sh. Pawan Kumar Jain R/o H. No. T 21, Gali No 8, Gautampuri, New Seelampur, Bhajanpura, Delhi 110053 and Suraj Shat S/o Kartik Shat, R/o G 315/5, Gali No 15, West Karawal Nagar, North East Delhi-110094 were found filling the empty vials labeled as Nivolumab 10 mg/mL (OPDYTA) and PEMBROLIZUMAB INJECTION (KEYTRUDA) with the liquid of Fluconazole injection USP2mg/ml (Forcan) and dextrose with a needle and syringe followed by sealing the vials using a sealing and capping machine kept in the said premises.

5. It is stated that the team of Drug Inspectors took three sets of samples drawn from the vials recovered from the said premises for lab testing. It is stated that both the accused were arrested and the present FIR was registered.

6. On the basis of disclosure statements of Viphil Jain and Suraj Shat, raids were conducted at different locations by separate teams and a huge quantity of spurious anti- cancer injections, empty vials, packaging boxes, leaflets, vial rubber caps, vials aluminum caps etc. were recovered and number of persons were apprehended and 12 accused persons, including the Petitioner herein, were arrested from different places.

7. The allegation against the Petitioner herein is that he along with other co-accused persons used to supply spurious medicines to various persons through We-fast and Bluedart courier services.

8. The Petitioner was arrested on 12.03.2024 and is in custody since then. Charge-sheet has been filed.

9. Learned Counsel for the Petitioner states that if convicted, the maximum punishment that can be awarded to the Petitioner for offences under Sections 274, 275 & 276 IPC is six months and for offences under Sections 308 & 408, the maximum punishment that can be awarded to the Petitioner is three years and only for the offence under Section 420 IPC the maximum punishment is seven years. He states that during arrest proceedings, a huge quantity of 137 Injections/Vials of anti-cancer injections, 519 empty Injections/vials of anti-cancer injections, 884 empty Boxes/Cartoons of Anti-Cancer Injections, Rs 89 Lakhs cash and 18,000 USD were recovered from the Petitioner at his flat at Gurugram, Haryana. He states that the case against the Petitioner is based on disclosure statements and WhatsApp chats and the Call Detail Records which are all documentary in nature and, therefore, there is no possibility of the Petitioner tampering with evidence. He, therefore, states that no useful purpose would be served in keeping the Petitioner in further custody.

10. *Per contra*, learned APP for the State vehemently opposes the Bail application stating that the Petitioner had actively worked in medicine and pharmaceutical field and he had good networking in different hospitals and in open market, therefore, it was easy for him to contact the relevant persons for procuring the supply of empty/filled vials of Anti-cancer injections.

11. It is stated that the Petitioner had also previously worked in reputed

hospitals. It is stated that the Petitioner is the kingpin of main supply chain of empty/filled anti-cancer injections and he procured the supplies of empty/filled anti-cancer injection vials from co-accused persons i.e., (1) Rohit Singh Bisht who was working as Team Leader in the Oncology Department of Venkateshwar Hospital, Dwarka, (2) Jitendra who was working in Oncology Department of Fortis Hospital, Gurugram, (3) Majid whom the Petitioner met in Millennium Hospital. Neeraj and Tushar Chauhan supplied major chunk of these anti-cancer injections procured from Viphil Jain to co-accused Aditya Krishna who was running a pharmacy shop in Muzaffarpur, Bihar in the name of Popular Medicine and others on demand in open market.

12. It is stated that the Petitioner was also running a medical tourism firm named Futura Global Healthcare and a wholesale pharmacy shop in the name of Mamta Enterprises which assisted his supply of the anti-cancer vials. It is stated that a huge quantity of 137 injections/Vials of anti-cancer injections, 519 empty Injections/Vials of anti-cancer injections, 884 empty Boxes/ Cartoons of Anti-Cancer Injections, Rs.89 lakhs cash and 18,000 USD were recovered from the accused kept at his flat at Gurugram, Haryana. Amount of Rs.52 lakhs kept at different bank accounts by the accused, earned through crime proceeds got freezed. It is stated that the Petitioner had bank account transactions with co-accused persons i.e., Tushar Chauhan, Majid Khan, Viphil Jain, Aditya Krishna, and witness/purchaser Delhi Medicine Hub (Akshay, Chandigarh). It is stated that the whatsapp chats of the Petitioner with his other associates i.e., Viphil Jain, Rohit Bisht, Majid Khan, Tushar Chauhan, Aditya Krishna, Sajid and Suraj Shat are vital and incriminating in establishing that they had prior

intention and knowledge to commit the offence. The Petitioner was in constant touch with other co-accused persons i.e., Viphil Jain, Rohit Bisht, Majid Khan, Tushar Chauhan, Aditya Krishna, Sajid, Suraj Shat and Jitender and his CDR corroborates with time and location with co-accused persons. It is stated that the interception voice call recordings of accused with accused Viphil Jain, Majid and Tushar Chauhan with regard to manufacturing, sale and purchase of Spurious Anti-Cancer Injections are crucial and his motive, intention and knowledge to commit the offence.

13. It is stated that the Petitioner is a part of a well-organized cartel which manufactures and supplies spurious anti-cancer medicines pan India. He states that the Petitioner was involved in supplying the spurious medicines to various co-accused and he was instrumental in distribution of the spurious medicines. He states that the case against the Petitioner is not restricted only to WhatsApp chats and disclosure statements. He states that there is a money trail and various other documentary evidences to connect the Petitioner to the offence. He further states that the Drug Inspectors had drawn samples from the manufacturing facility and on analysis of the same it was found that the sample is not of standard quality as defined in the Drugs and Cosmetics Act, 1940 as the sample was found to be spurious under Section 17B (d) of the Drugs and Cosmetics Act, 1940 due to non-conformity of identification test. He states that recovery has been made from the Petitioner which shows the complicity of the Petitioner with the crime. He states that the possibility of the Petitioner committing the same offence again also cannot be ruled out. He, therefore, states that bail ought not to be given to the Petitioner herein.

14. Heard the learned Counsel for the Petitioner and the learned APP for the State.

15. In Prasanta Kumar Sarkar v. Ashis Chatterjee, **(2010) 14 SCC 496,** the Apex Court has laid down the parameters for granting or refusing bail to an accused and the same reads as under:

> *"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;*
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> *iv. Danger of the accused absconding or fleeting, if released on bail;*
>
> *v. character, behavior, 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."*

16. The Petitioner is accused of making spurious medicines, the FSL report indicates that the medicines are not of standard quality. The maximum punishment that can be awarded to the Petitioner is seven years which is punishable only under Section 420 IPC. The report of Medical Board of AIIMS, New Delhi has also been received wherein the Board has categorically mentioned as under:

> *(a) Injections of 'Not of Standard Quality' may be harmful due to their limited efficacy,*

> *(b) With low and compromised efficacy, there is a chance that the patient can have progression or relapse of the cancer.*
>
> *(c) Progression and/or relapse of the cancer due to limitation of the treatment may result in 'death of patient'.*

17. In the present case, the Petitioner is in custody since 12.03.2024. Charge-sheet has been filed. The evidence is primarily documentary in nature and is already in the custody of Police.

18. Considering the fact that the evidence is primarily documentary in nature, the possibility of the Petitioner tampering with evidence is very remote and since most of the witnesses are official witnesses, the chance of the Petitioner threatening the witnesses is also very remote.

19. There is no doubt that the learned APP for the State has raised his concerns that the Petitioner is likely to repeat the same offence, if enlarged on bail, which is a matter of consideration but this Court is inclined to grant regular bail to the Petitioner with a direction to the Petitioner that he shall not continue the same business of supplying any kind of medicines.

20. As rightly contended by the learned Counsel for the Petitioner that the maximum punishment which can be awarded to the Petitioner is 7 years and the Petitioner is already in custody for the last five months. This Court is of the opinion that orders can be passed to ensure that the Petitioner, who is the resident of Delhi, does not leave the city and is available to receive the sentence in case he is convicted.

21. In view of the above and also considering the law laid down by the Apex Court, the Petitioner is granted grant regular bail on the following

conditions:

a) The Petitioner shall furnish security in the sum of ₹1,00,000/- with two sureties of the like amount to the satisfaction of the Trial Court/Magistrate/Duty Magistrate.

b) The Petitioner shall furnish an address in Delhi to the satisfaction of the Trial Court and the Investigating Officer.

c) The Petitioner shall not leave NCT of Delhi without prior permission of the concerned Court.

d) The Petitioner is directed to attend all the proceedings before the Trial Court.

e) The Petitioner shall report to the concerned Police Station every Monday, Wednesday and Friday at 10:00 AM and he should be released after completing all the formalities within an hour.

f) The Petitioner is directed to give his mobile numbers to the Investigating Officer and keep them operational at all times.

g) The Petitioner is directed not to indulge in the business of supplying of any kind of medicines till the completion of trial. In case it is found that the Petitioner is found in indulging any kind of business which is connected with supplying of any kind of medicines, including medical tourism, the bail granted to the Petitioner would be cancelled.

h) The Petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.

i) Violation of any of these conditions will result in the cancellation of the bail given to the Petitioner.

22. It is made clear that the observations made in this Order are only for

the purpose of grant of bail and cannot be taken into consideration during the trial.

23. With these directions, the bail application is disposed of along, with the pending applications, if any.

SUBRAMONIUM PRASAD, J

AUGUST 23, 2024
S. Zakir