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

\+ BAIL APPLN. 2892/2024

JITENDER .....Petitioner

Through: Ms. Komal Chhibber and Mr. Sahil Kalra, Advocates

versus

STATE OF DELHI AND ANR. .....Respondents

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**

**ORDER**

% **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.

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

Neeraj Chauhan and Suraj Shat and 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, 02 sealed vials of injection Keytruda and 01 used vial of Opdyta were recovered from the possession of the Petitioner. 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 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.

11. It is stated that Neeraj Chauhan brought the Petitioner herein to their nexus, while the Petitioner was working in Oncology Department, Fortis Hospital, Gurugram. It is stated that the Petitioner herein started misappropriating the filled/empty anti-cancer injections from the hospital and started supplying the same to Neeraj Chauhan, who used to pay him handsomely for the same.

12. 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.

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

14. 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;*

*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."*

15. 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. 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.

16. 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 not

the resident of Delhi, does not leave the city and is available to receive the sentence in case he is convicted.

17. In view of the above and also considering the law laid down by the Apex Court, this Court is inclined to grant regular bail to the Petitioner 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 medicines till the completion of trial.

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.

18. 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.

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

**SUBRAMONIUM PRASAD, J**

**AUGUST 23, 2024**
*S. Zakir*