

(2022) 04 SHI CK 0016

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1009, 1011 Of 2021

Ranjna Goyal And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 06-04-2022

Acts Referred:

Drugs And Cosmetics (Amendment) Rules, 2020 — Rule 84(D)
Code Of Criminal Procedure, 1973 — Section 438, 438(1), 438(2)
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 22, 29, 37, 65A
Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 571

Citation : (2022) 04 SHI CK 0016

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : K.D. Shreedhar, Shreya Chauhan, Kuldeep Chand

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioners in these petitions are husband and wife, who are partners in a Firm namely M/s Orison Pharma International (in short 'Firm'), having manufacturing unit in Village Khari, Mauza Ogli, Kala Amb, District Sirmour, H.P. They have approached this Court by invoking provisions of Section 438 of the Code of Criminal Procedure (in short 'Cr.P.C.'), seeking anticipatory bail in case FIR No. 52 of 2021, dated 2.6.2021, registered in Police Station Kala Amb, District Sirmour, H.P. under Sections 22 and 29 of Narcotics and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Sections 420, 467, 468, 571 and 120B of the Indian Penal Code (for short 'IPC').
2. For adjudication of these petitions, common question of fact and law are involved, therefore, these petitions are being decided by passing a common order.
3. Status reports, disclosing the progress in the investigation, have been filed on various dates. Petitioners are on anticipatory bail granted by co-ordinate Bench

of this Court vide order dated 4.6.2021.

4. Prosecution case in brief is that a huge quantity of Celcidal 100 SR Tablets containing Tramadol HCL (herein after to be referred as Tablets), was recovered and seized by Punjab Police of Ajnala with printed inscription on these Tablets 'M/s Orison Pharma International' as manufacturer and marketed by 'M/s P.P. Pharma A-1 Park Plaza, Bandra East, Mumbai' and 'New Care Healthcare Shop No.103, Near Namaste Circle Sahibabagh Ahmedabad-380001', whereupon Ajnala Police had approached Police Station, Kala Amb for visiting the premises of the Firm of the petitioners to carry out further investigation. During this process, Officer-in-Charge of Police Station, Kala Amb also came to know issuing of a Show Cause Notice to the Firm by Assistant Drug Controller, Nahan to stop production and seizure of Tablets from manufacturing unit under the provisions of Drugs and Cosmetics Act, 1940 and it has come in to the notice of Police that aforesaid Tablets, containing Tramadol were found to be marketed through 'M/s P.P. Pharma' and 'New Care Healthcare', referred supra, but on further inquiry Police received information from Police Station Madhavpura, District Ahmadabad, Gujarat revealing that Firm namely New Care Healthcare does not exist at the given address. Police also received telephonic information from the concerned Police Station that Firm namely M/s P.P. Pharma also does not exist at the given address. On receiving aforesaid information, FIR No. 52, dated 2.6.2021 was registered in Police Station Kala Amb and Tablets seized by the Drug Inspector on 30.5.2021 were also taken in possession and seized by the Police. Thereafter petitioners approached this High Court seeking anticipatory bail and on 4.6.2021, they have been enlarged on interim bail by a Co-ordinate Bench of this Court.

5. As per status report, in the year 2016-17 petitioners Firm had purchased 650 Kilograms of Tramadol material, whereas in the year 2021, 8545 Kilograms Tramadol was purchased by the Firm and the Firm had sold medicines containing salt of Tramadol to 27 Firms out of that licence of M/s Goyal Brothers of Barailly was revoked/cancelled by concerned authority in February 2021 whereas Tablets containing Tramadol have been found to be sold by Firm of petitioners after that.

6. As per status report, petitioners could not produce any agreement with New Care Healthcare and P.P. Pharma, as required under law/instructions in view of Rule 84(D) incorporated in the Act through Drugs and Cosmetics (Amendment) Rules, 2020. Further that license issued to M/s Goyal Brothers, Barailly had been cancelled by Local Drug Department on 26.2.2021 and thereafter this Firm was not having the requisite licence to purchase Tablets containing Tramadol, which have been sold by the Firm of petitioners to the said Firm. It has been stated that further investigation with respect to M/s Garg Drugs is yet to be carried out and facts are to be verified by visiting Bihar which could not be done because of paucity of time and resources and further that proprietors of some customer Firms are underground and they are yet to be associated in the investigation and to be interrogated after searching them regarding their connivance with petitioners Firm. Lastly, it has been stated that petitioners are joining

investigation and supplying necessary requisite record and information time to time.

7. Learned Additional Advocate General has submitted that a prima facie case is made out against the petitioners for transportation and selling of Tablets containing Tramadol in violation of Rule 84(D) of Drugs and Cosmetics Rule and such violation, in view of Section 65A of NDPS Rules 1985 is attracting provisions of NDPS Act and, therefore, petitioners Firm has committed offence under Section 22 of NDPS Act as the petitioners have marketed Tablets containing Tramadol in violation of NDPS Rules and have also sold the Tablets containing Tramadol to a Firm M/s Goyal Brothers, whose licence had already been revoked, therefore, for involvement of huge commercial quantity of Tramadol rigors of Section 37 of NDPS Act are attracted and, therefore, petitioners are not entitled for bail, much less, anticipatory bail. Therefore, prayer for rejecting the bail applications has been made.

8. Learned counsel for the petitioners has invited attention of the Court to conclusion narrated in status report submitted on 26.11.2021, wherein it has been stated that except 8 Firms, regarding which investigation was yet to be carried out, supply of Tablets containing Tramadol to other Firms was found to be authorized. He has also referred status report filed on 5.3.2022, wherein it has been stated that except one Firm, i.e. M/s Goyal Brothers, Tablets containing Tramadol have been found to be sold to Firms which were authorized to purchase such Tablets. It has been further canvassed that there is no illegality or criminality in marketing the Tablets containing Tramadol through New Care Healthcare or PP Pharma, as Tablets containing Tramadol through these Firms were marketed prior to issuance of instructions by the Authority making it mandatory to have agreement with the Firms through whom drug manufactured by the Firm were to be marketed, as such terms were notified vide Office Order dated 4.6.2021, issued by State Drug Controller, Baddi, District Solan, H.P. Copy of the Office Order has also been placed on record. Therefore, it has been contended that there is no illegality committed by the Firm of the petitioners in marketing the Tablets containing Tramadol through aforesaid Firm without entering into agreement.

9. Learned counsel for the petitioners has also placed on record document supplied by M/s Goyal Brothers, Barailly, which indicates that this Firm was licenced to purchase Tablets containing Tramadol. He has further contended that on verification of website of the Department this Firm was found having valid licence. It has been contended that as on date also, the website of the concerned Department is reflecting this Firm as a holder of valid licence and the Firm of the petitioners had supplied Tablets containing Tramadol to this Firm after verifying the facts from the website of the concerned Department. It has also been submitted by learned counsel for the petitioners that petitioners are joining investigation and are cooperating with the Investigating Agency without any default or hiding anything from the Investigating Agency and further that at no

point of time custodial interrogation of the petitioners has been prayed in either status report.

10. It has been submitted on behalf of the petitioners that the Firm of the petitioners has sold tablets to the genuine firms and nothing has come in evidence that Firm of the petitioners was involved in illegal supply of the tablets in reference to any firm or person involved in commission of offence with respect to such tablets. It has further been submitted that Firm of the petitioners has made genuine supplies to genuine firms, according to requisition/demand raised by such company(ies)/firms. Further that no lot of Tablets in reference with print 'Marketed by P.P. Pharma' or 'New Care Healthcare' has been sold illegally or to unauthorized persons/company/firm which is also evident from various Status Reports filed by the Investigating Agency/Officer and that there is no link between the tablets recovered by Punjab Police in case FIR No.196 of 2021, registered in Police Station Ajnala, with supply of tablets in reference by the Firm of the petitioners. Responsibility of further sale, legal or illegal, of such tablets is not upon the Firm of the petitioners.

11. It has been further submitted by learned counsel for the petitioners that, as on date, there is nothing on record to implicate the petitioners in commission of offence under NDPS Act and for that reason only Investigating Agency at no point of time has prayed for custodial interrogation of the petitioners or cancellation of anticipatory bail granted to them. It has also been submitted that the petitioners are ready to abide by any condition imposed by the Court and to furnish bail bonds with local surety, and also to surrender for custody at any point of time as and when required under law and directed by the Court.

12. It has been stated that petitioner Rakesh Kumar Goyal has also been arrayed an accused in FIR No. 196 of 2021 registered in Police Station, Ajnala, but in that case also petitioner Rakesh Kumar Goyal has been enlarged on bail by Special Judge, Amritsar vide order dated 25.10.2021 and supply and sale by the petitioners, during investigation in present case has been found in order, and fault, if any, lies with other Firms for which petitioners are not responsible, as petitioners had taken every precaution to verify the facts about the licence of Goyal Brothers and also had marketed their drug through the Firms which prima facie appeared to be genuine and supplying drugs to genuine firms. It has been contended that in the facts and circumstances of the case available on record, petitioners are entitled for bail.

13. To substantiate the claim of the petitioners, learned counsel for the petitioners has referred judgment of the Supreme Court in Sumit Mehta Vs. State (NCT of Delhi), (2013) 15 SCC 570, para 11 of which reads as under:-

"While exercising power under Section 438 of the Code, the Court is duty bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so

as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the Court while imposing conditions must be exercised with utmost restraint.”

14. Learned counsel for the petitioners has also referred pronouncement of the Supreme Court in *Sushila Aggarwal and others Vs. State (NCT of Delhi)* and another, reported in (2020) 5 SCC 1, wherein five Judges Bench has culled out certain principles with respect to adjudication of petitions for anticipatory bail under Section 438 Cr.P.C.

15. While referring judgment of the Supreme Court in *Arnab Manoranjan Goswami Vs. State of Maharashtra and others*, reported in (2021) 2 SCC 427, learned counsel for the petitioners has contended that human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation and the citizen is subject to the edicts of criminal law and procedure.

16. Without commenting upon merits of rival contentions of the parties, considering the material placed before me and also parameters and factors necessary to be considered at the time of adjudication of bail application, I am of the opinion that, at this stage, the petitioners may be enlarged on bail.

17. Accordingly, the petitions are allowed and the petitioners are ordered to be enlarged on bail, at this stage, subject to their furnishing personal bonds each in the sum of 1,00,000/- with two sureties each of the like amount, one of which should be a local surety, as undertaken by the petitioners, and upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to ensure the presence of petitioners/accused at the time of trial:

(i) That the petitioners shall join the investigation and attend the Court as and when directed to do so by the Investigating Agency/Court;

(ii) that the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(iii) that the petitioners shall not obstruct the smooth progress of the investigation/trial;

(iv) that the petitioners shall not commit the offence similar to the offence to which they are accused or suspected;

(v) that the petitioners shall not misuse their liberty in any manner;

(vi) that the petitioners shall not jump over the bail;

(vii) that they shall keep on informing about the change in address, landline number and/or mobile number, if any, for their availability to Police and/or during trial;

(viii) they shall not leave India without permission of the Court.

(ix) In case, at a later stage, petitioners are found to be involved in commission of offence of the nature and gravity warranting their arrest and detention, then the police will be at liberty to apply for cancellation of bail.

18. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner, enlarged on bail, as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioners as it may deem necessary in the interest of justice.

19. In case the petitioners violate any conditions imposed upon them, their bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

20. Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

21. Observations made in this petition hereinbefore shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail application.

22. The petitioners is permitted to produce copy of order downloaded from the High Court website and trial Court shall not insist for certified copy of the order, however, he may verify the order from the High Court website or otherwise.

The petitions stand disposed of in the aforesaid terms.