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CRM-M-28183-2019 (O&M)
SARABJIT SINGH VS STATE OF PUNJAB

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Present:- Mr. N.S. Mahal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. C.S. Bakshi, APP, U.T., Chandigarh.

Mr. Chetan Sharma, AAG, Haryana.

Mr. Satya Pal Jain, Additional Solicitor General of India
with Mr. Rajiv Sharma, Advocate
for NCB.

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At the very outset, it may be noticed that in the main petition praying for grant of regular bail to the petitioner – Sarabjit Singh, in FIR No.0072 dated 24.04.2019 registered under Sections 20/22/61/85 of the NDPS Act, at Police Station Bhogpur, District Jalandhar (Rural), for releasing him on interim bail as per the order dated 07.01.2020, will continue till the next date of hearing.

On 07.01.2020, noticing certain disturbing facts, it was observed as under:-

> *"It is worth noticing here that on 22.12.2019, a news item was published in 'The Tribune' that Food and Drugs Administration (for short 'FDA') team has seized approximately 12 lakh tablets of Tramadol having a value of approximately Rs.85 lacs and registered the case under the Drugs and Cosmetics Act, 1940 (for short 'Act of 1940'), with reference to the searches carried out by the FDA, in the State of Punjab. It is further reported that some licenses have been cancelled and the Punjab*

Government is taking measures to weed out the drug menace from the State.

As number of cases under the NDPS Act are coming in the Courts, in which 'Tramadol' is one of the salt, which form part of majority of the FIRs. It is worth noticing that this salt was inserted as a psychotropic substance in the Schedule of the NDPS Act, at Sr. No.110Y, by the Ministry of Finance, Department of Revenue, Govt. of India vide Gazette Notification dated 26.04.2018 and in the Table, after Sr. No.238 ZG, the Tramadol was added at Sr. No.238 ZH as one of the narcotic drug and psychotropic substance (international non-proprietary name). Later on, Ministry of Finance, Department of Revenue, Government of India, vide its Gazette Notification dated 13.07.2018, added a note in the aforesaid notification dated 26.04.2018 that "The licensed manufacturers, importers and exporters of Tramadol shall be covered under the provisions of this notification after the expiry of a period of 120 days from the date of its publication in the Official Gazette." This period of 120 days has already lapsed and thereafter, the FDA, Punjab issued an official order dated 13.08.2019, in modification of the order dated 29.07.2019, regarding imposing of specific restriction on stocking for sale and distribution of Tramadol and Tapentadol Oral Solid Dosage by the wholesale, retailsale licencees and RMPs in addition to already restricted 06 drugs formulations. In Clause (b) of the aforesaid order dated 13.08.2019, the retail sale chemists are permitted to keep in their possession 500 tablets/capsules of 06 restricted drugs including Tramadol and Tapentadol Oral Solid Dosage and as per Clause (c), the wholesale licencees, who are direct/authorized stockists/C&FA/distributors of drug manufacturing companies, upon obtaining a licence from

the State Licensing Authority, can possess tablets upto 5000 of all brands and C&FA are allowed to possess 50000 tablets/capsules at a time inclusive of all brands.

In majority of the FIRs, which are registered in the State of Punjab, U.T. Chandigarh and State of Haryana, a suspect is found in possession of the tablets/capsules of having Tramadol salt, which is easily available with the retailsale/wholesale chemists, including C&FA distributors and stockists, by obtaining a licence from the State Licensing Authority and there is no other source of acquiring such tablets/capsules.

Surprisingly, the news item dated 22.12.2019, at one hand, reveals that huge quantity of tablets was recovered, which is admittedly beyond the permissible limit of the manufacturer or C&FA, however, only a case under the Act of 1940 has been registered and no FIR under the NDPS Act has been registered. It has also been noticed in many cases that when the FIR is registered under the Act of 1940, the applications are moved for discharge of the accused persons by the Drug Inspector in conflict with the procedure under the NDPS Act and it seems that there is no proper co-ordination between the FDA and the State police, which investigate cases of illegal recovery of psychotropic substance. The office order dated 13.08.2019 does not provide a full-proof method of stocking of the prohibitory drugs under the NDPS Act and the State of Punjab, U.T. Chandigarh and State of Haryana, instead of keeping the prohibited/scheduled drugs in direct possession of the Drug Inspectors of the respective Districts, have outsourced the same to the manufacturers and C&FA, stockists, distributors etc., from where the stock can easily be available for the persons, who are involved in the drug business, therefore, notice is issued to

the Chief Secretary, State of Punjab, Home Secretary, U.T. Chandigarh, the Chief Secretary, State of Haryana, Director, NCB, Chandigarh, Commissioner and Joint Commissioner, Food and Drugs Administration, Punjab to explain their position about forming a full-proof policy in this regard.

The Director, Bureau of Investigation, Punjab is also directed to file a specific affidavit regarding the investigation conducted with reference to the news item dated 22.12.2019, wherein huge quantity of Tramadol tablets was recovered, but the FIR has been registered only under the Act of 1940 and not under the NDPS Act.

List again on 04.03.2020.

Registry is directed to issue notice to the Chief Secretary, State of Punjab, Home Secretary, U.T. Chandigarh, the Chief Secretary, State of Haryana and Director, Narcotic Control Bureau, Chandigarh for the date fixed regarding existing policies in this regard."

In response thereof, separate replies are filed.

In the affidavit of the Director Bureau of Investigation, Punjab, Chandigarh dated 03.03.2020, the following assertions are made:-

"....This means that after 29.8.2019, no retailer or wholesaler, including C&FA lincesees are permitted to hold stock beyond permissible limit, which would not only be an offence under the Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945 made thereunder, but would also be an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985. ***Accordingly, M/s. Ravebhel Pharmaceutical Pvt. Ltd. and/or its Directors are liable to be investigated for offences under Section 22***

of the NDPS Act, 1985, and Section 32 of NDPS Act, 1985 read with Section 22 of the said Act. *This is apart from penal action under the Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945."*

In another recent reply filed by the Joint Commissioner (Drugs), Food and Drugs Administration, dated 23.07.2021, it is observed as under:-

"....It is humbly submitted that M/s. Ravenbhel Pharmaceuticals Private Limited, Amritsar is holding wholesale drugs licenses bearing No.133480 and 133481 dated 23.04.2013, which licenses are valid upto 22.04.2023. ***It has also been informed that during inspection of the aforesaid firm on 16.12.2019 about 12 laksh Tramadol Tablets were seized on Form 16 by the Drugs Inspector, Amritsar under the 1945 Rules for want of valid permission of the Licensing Authority in terms of the order dated 13.08.2019. Prior to the inspection on 16.12.2019, the firm had applied for permission of Tramadol oral dosage forms on 10.12.2019 in terms of the order dated 13.08.2019. However, in the meantime, the inspection was done on 16.12.2019 leading to recovery of these tablets. In this view of the matter, the permission applied by the firm on 10.12.2019 was rejected by the then Licensing Authority vide its order dated 22.12.2019. Hence, the firm was not having valid permission of Tramadol in terms of order dated 13.08.2019 on the date of inspection."***

In the reply filed by the Director, Health and Family Welfare-cum-Drug Controller, Chandigarh and the reply dated 29.07.2021, filed by the Narcotic Control Bureau, it is stated that the

formulation of drug 'TRAMADOL' undisputedly falls under the NDPS Act. These replies will be dealt with later on.

There are increasing number of cases in the State of Punjab, wherein, primarily the carriers of drug are arrested by the police under the NDPS Act, however, the suppliers or source of acquiring drugs in majority cases do not come to fore which lead to acquittal in many cases.

It is worth noticing that on an average out of every 10 cases listed before the Criminal Benches of this Court, 08 are from the State of Punjab and 01 case either from U.T., Chandigarh or State of Haryana.

Even in todays' 'The Tribune', there is a news item that on the direction given by this Court, Amritsar (Rural) police has booked a Sub-Inspector and Assistant Sub-Inspector of Punjab Police under the NDPS Act for unnecessarily searching, detaining and arresting a person of two different Police Stations in Amritsar. The said newspaper reporting is taken on record as 'Mark A'.

Therefore, in number of cases registered by Punjab Police, especially of Amritsar District, this Court has noticed false implication of innocent persons. In one such case where the false implication was pleaded by one Balwinder Singh @ Kukku, while filing CRM-M No.3144 of 2018, titled as 'Balwinder Singh @ Kukku vs State of Punjab', with a prayer to transfer the investigation of an FIR registered against him under the NDPS Act, the Co-ordinate Bench vide order dated 12.01.2021, has passed the following order:-

> *"**Keeping in view the aforesaid facts, the petition is allowed. FIR no.16, dated 04.08.2017, registered under Section 21, 25, 29 61, 85 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and Section 25, 54, 59 of the Arms Act, is directed to be transferred to the Central Bureau of Investigation – respondent no.6**. It is expected that the Central Bureau of Investigation would carry out further investigation in these circumstances and thereafter, take appropriate steps. The Punjab Police is directed to hand over the complete file alongwith CCTV footage and original document Annexure P-1 to the Central Bureau of Investigation forthwith against receipt. The Central Bureau of Investigation is, also, directed to register an FIR against the erring officials, noticed in the report submitted by Special DGP, Punjab. It is expected that the Central Bureau of Investigation would carry out free, fair and impartial investigation, in the matter.*
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> *In the meantime, till the Central Bureau of Investigation completes its investigation in FIR no.16, dated 04.08.2017, learned trial court is directed to keep on hold further proceedings in the case qua the petitioner."*

In another case filed by one Medical Store in Amritsar, this Court vide order dated 01.08.2012 in CWP No.14603 of 2012, has observed as under:-

> *"All such retailers/stockists who are found to be in possession of habit forming drugs, which are not supported by purchase bills or any such stock of drugs which cannot be traced to their origin of purchase, should straightway lead to a presumption not only of a violation of terms of the license, but also to be a violation of the provisions of N.D.P.S. Act and F.I.R. should be registered but as a safeguard the F.I.R. should be registered only*

after such a licencee has been given adequate opportunity to produce records upto the appellate authority.

Consequently, the writ petition is dismissed with a direction to the respondents to immediately lodge an F.I.R. against the petitioner for having violated the provisions of Sections 21, 22 of the N.D.P.S. Act."

To the contrary in the present case, there is a huge recovery of 12.00 lacs 'TRAMADOL' tablets and surprisingly, the affidavit of the Director Bureau of Investigation, Punjab, which was filed in the Court about 1½ years ago, though, states that an offence under Section 22/32 of the NDPS Act is made out but, no FIR has been registered till date. Even the recent reply filed by the Joint Commissioner (Drugs) Food and Drugs Administration dated 23.07.2021, as noticed above, acknowledge this fact of recovery of 12.00 lacs tablets of 'TRAMADOL'.

Shockingly, in both the affidavits, nothing is stated where the recovered stock of 12.00 lacs of TRAMADOL tablets has gone and even no batch number, etc., is given This is a serious lapse and inaction on the part of the Punjab Police as well as the Drug Controller and this clearly reveals that everything is not normal with the investigation of the NDPS cases in the State of Punjab.

In view of the above, in the light of various judgments of Hon'ble Supreme Court of India laying down guidelines for handing over cases or transfer of investigation to CBI, the investigation is handed over to the Central Bureau of Investigation being an exceptional case as Punjab State functionaries for the reason best known to them are

intentionally protecting the drug offenders.

Mr. Sumeet Goel, Sr. Advocate, the Senior Standing Counsel for C.B.I., along with Mr. A.K. Ranolia, Advocate, who are present in the Court, are informed about this order through video conferencing.

The concerned official of Punjab Police/office of the Joint Commissioner (Drugs), Food and Drugs Administration, Punjab, will hand over all the documents to C.B.I., along with the recovered 12.00 lacs 'TRAMADOL' tablets.

The CBI, in view of admitted position of recovery, will register an FIR and investigate the case.

It is made clear that during the investigation, the CBI

(i) Will ensure that the entire contraband recovered from M/s. Ravenbhel Pharmaceuticals Private Limited, is handed over to the CBI and in case, there is any shortage, C.B.I. will investigate whether the same is misused for implicating any innocent person;

(ii) In case of shortage of recovery in possession of Punjab Police/Drug Department, CBI will prepare an inventory giving batch number, date of manufacture/expiry, name of manufacturer and will check from CFSL/FSL in State of Punjab if the 'TRAMADOL' tablets of same batch number are involved in any other FIR in the State to find out false implication of any innocent person by using this stock;

(iii) In such eventuality, it will also be open to C.B.I. to check record of any Police Station or publish a notice in newspaper giving batch number and name of manufacturer, etc., so as to enable the defence counsels in different FIRs/cases to know about it and to take appropriate recourse before Court of law;

(iv) To look into the involvement of any public servant under the aid of Section 120-B IPC in delaying the registration of an FIR or any other investigation, which it deem fit.

However, it is clarified that these directions are only with regard to the recovery from M/s. Ravenbhel Pharmaceuticals Private Limited as per 02 affidavits referred to above.

As requested by learned senior counsel for CBI, 10 weeks time is granted to file the status report.

List again on 28.10.2021.

(ARVIND SINGH SANGWAN)
JUDGE

02.08.2021
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