

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

BAIL APPLICATION NO. 34 OF 2023

Mehul Desai, aged about 48 years, S/o Manubhai Desai, a resident of
4/26, the Nest residency, Near Shruti Banglows, Shastri Road,
Dhamdod, Lumbha, Surat, Gujarat - 394355.

.... Petitioner

- Versus -

The Union of India, represented by the Narcotics Control Bureau
(NCB), through its Intelligence officer, Narcotics Control Bureau,
Imphal, CPWD Quarters, Changangei, Kongba Uchekon, 795008,
Imphal West, Manipur.

.... Respondent

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner	:	Mr. Leo Rommel, Advocate
For the respondent	:	Mr. W. Darakishore, Senior PCCG
Date of hearing	:	05.09.2024
Date of order	:	13.12.2024

JUDGEMENT & ORDER
(CAV)

[1] Heard Mr. Leo Rommel, learned counsel appearing for the petitioner and Mr. W. Darakishwor, learned senior PCCG appearing for the respondent at length.

[2] The present Bail Application has been filed under section 439 Cr.P.C., r/w Section 37 ND & PS Act praying for releasing the petitioner on bail in connection with the Special Trial Case (NDPS) No. 26 of 2023 with reference NCB Crime No. 02/NCB/Imp/2023, dated 03.03.2023 U/s 8(c) & 9A to be read with Sec. 21 (c), 25A, 25 & 29 of the ND & PS Act, 1985 with the following prayer;

"(i) *to pass an order for releasing the petitioner on bail in connection with the Special Trial Case (NDPS) No. 26 of 2023 with reference NCB Crime No. 02/NCB/Imp/2023, dated 03.03.2023 U/s 8(c) & 9A to be read with Sec. 21 (c), 25A, 25 & 29 of the ND & PS Act, 1985.*

(ii) *to pass any further order or any appropriate/order/direction in the facts and circumstances of the case."*

[3] The case of the petitioner (Accused/Petitioner) is that he was arrested on 05/08/2023 along with one co-accused (namely Harshal Desai) by a team of Narcotics Control Bureau (NCB) on the strength of a NCB Crime No. 02/NCB/Imp/2023, dated 03.03.2023 with an allegation of generating fake/ bogus billing of various Pseudoephedrine content drugs in the name of M/s Recover Health Care as per statement given by the Accused No. 3 (Bhadresh Patel). Thereafter they were produced before the Ld. Addl. CJM, Bardoli, Surat,

Gujarat thereafter they were transit remanded for 7 days and they were finally produced before this Hon'ble Court on 09.08.2023 and was remanded into custody till today.

[4] Learned counsel for the petitioner submits that the accused/petitioner (Mehul Desai) is the former Director of the Ardor Drugs Pvt. Ltd and he is only a salaried employee of M/S Ardor Drugs Pvt. Ltd. As per the statement of accused No. 3 namely Bhadresh Patel (who is the Director of M/s Recover Health Care), supplied 1500 packets each containing 1000 tablets of Pseudoephedrine out of which 533 packets actually seized by the team of NCB Imphal on 03.03.2023 from the house of Jangminthang Guite mother of accused No. 2. Thereafter, Bhadresh Patel supplied the Pseudoephedrine contents tablets to accused no. 1 namely Abdul Wakil without having any drug license or valid documents for which he accepted an amount of Rs. 11.68 lakh in his Bank of Baroda A/c. Thereafter, Bhadresh Patel in connivance with Harshal Desai, Director of Ardor Drugs Pvt. Ltd., Tapi, Gujarat received the consignment of Pseudoephedrine tablets in the brand name of Phifed tablets and bill was generated in the name of Admos SR (A non NDPS content drug) on receiving instruction from accused no. 1 namely Abdul Wakil. He further submits that according to the statement of accused No. 3 i.e. Bhadresh Patel (owner of Recover Healthcare Pvt. Ltd.), Ardor Drugs Pvt. Ltd. used to generate bogus bill/tax invoices in the name of Recover Healthcare Pvt. Ltd. and never

actually supplied these drugs to M/s Recover Healthcare, Ahmedabad except for the 15 lakhs Phifed tablets containing Pseudoephedrine HCl which were supplied to him under bogus tax invoice generated for ADMOS SR tablets. Bhadresh Patel has also stated that he used to get commission of Rs. 1 for a strip of ten tablets of Pseudoephedrine for accepting bogus billings/tax invoices. Accused No. 3 Bhadresh Patel further alleged that the petitioner in connivance with Harshal Desai generated fake/bogus billing of various Pseudoephedrine content drugs in the name of M/s Recover HealthCare and actually never supplied any drugs to M/s Recover HealthCare.

[5] Learned counsel for the petitioner submits that in connection with NCB Crime No. 02/NCB/Imp/2023, dated 03.03.2023 U/s 8 (C) & 9A to be read with Sec. 21 (C), 25A, 25 & 29 of the ND & PS Act 1985, the I.O of the case has submitted Charge sheet thereafter again submitted additional Complaint before the Court of Ld. Special Judge, ND & PS, Manipur being Additional Complaint u/s 173 (8) Cr.P.C for commission of Offence u/s 9 A and punishable u/s 25 A and 29 of the NDPS Act, 1985 (as amended) on 03.10.2023 against the two accused persons namely (i) Mehul Desai (the present petitioner) and (ii) Harshal Desai. The petitioner has been arrayed as accused No. 6 in the said Special Trial Case (NDPS) No. 26 of 2023 and the present stage of the said trial case is for Charge Hearing. The petitioner filed a bail application before the Court of Special Judge, ND & PS, Manipur under

Cril. Misc (B) Case No. 128 of 2023 praying for releasing him on bail in various grounds. However, the Ld. Special Judge (ND & PS), Manipur rejected the bail application of the petitioner on 30.11.2023. He further submits that the petitioner is absolutely innocent of the charge leveled against him in connection with Special Trial Case (NDPS), No. 26 of 2023 with reference to NCB Crime No. 02/NCB/Imp/2023. He further submits that the accused/petitioner had already resigned from the Ardor Drugs Pvt. Ltd. on 23rd Aug. 2021 and the accused/petitioner had no access and not aware of the whereabouts and bill/invoices.

[6] Learned counsel for the petitioner submits that the NCB, Guwahati along with the Intelligence Officer (IO) Narcotics Control Bureau (NCB) Ahmedabad Zonal Unit and their team members have already carried out search and possible seizure in the factory of M/S Ardor Drugs Pvt. Ltd. and prepared PANCHANMA on two consecutive day's i.e. from 11.05.2023 to 12.05.2023 and the accused/petitioner has always Co-operated with the investigating agency in the course of investigation. Even much prior to his arrest a joint team of NCB Imphal, NCB Guwahati and NCB Gujarat has investigated the case and searched the factory premises of M/S Ardor Drugs Pvt. Ltd and statement of the accused/petitioner were also recorded twice at that time. Panchanma was also drawn in his presence. He further submits that ban under Section 37 of NDPS Act would not apply to the accused/petitioner since he is charged for the offence u/s 9 A, 25 A and 29 of the NDPS Act and

Section 37 apply to the case u/s 19, 24 and 29 of the NDPS Act only and not to any other section. He further submits that the statement of the accused/petitioner himself and Harshal Desai recorded after their arrest are not u/s 67 of the NDPS Act since their statement are recorded after their arrest and therefore the same cannot be termed as statement u/s 67 of the NDPS Act since Article 20(2) of the constitution of India would be attracted and therefore one can never be compelled to be witness against himself.

[7] Learned counsel for the petitioner submits that the accused/petitioner Mehul Desai is only a salaried employee of M/S Ardor Drugs Pvt. Ltd. and was just following the command of his boss and performed his duties as per instructions of his boss, hence he cannot be said liable for any act or omission on part of the company or its Director. The company M/s Ardor Drugs Pvt. Ltd. is having legal and valid license for such controlled drugs and the company has never breached any conditions of license, since the license of the company has never been revoked or suspended till date. On the contrary, the Government has recently renewed the same without any difficulties and licensing authorities has never issued any notice upon the company. The company M/s Ardor Drugs Pvt. Ltd. had supplied official medicine to the another license holder company (Recover Health care of Mr. Bhadresh Patel Accused No. 3) that too by official GST paid invoices and e-way bill. But it is the Recover Health care company (of Mr.

Bhadresh Patel Accused No. 3) which has allegedly supplied goods to a person Mr. Abdul Vakil Accused No. 1 who was not license holder. Hence, the company in which accused/petitioner is working has not done anything wrong, illegal or contrary to the law. He further submits that the petitioner/accused has been falsely implicated as an accused in the case and the personnel liberty guaranteed to the petitioner under Article 21 of the Constitution of India cannot be deprived by falsely implicating the petitioner in connection with the Special Trial Case (NDPS) No. 26 of 2023 with reference to NCB Crime No 02/NCB/Imp/2023.

[8] Learned counsel for the petitioner further submits that the petitioner is praying for releasing him on bail as he was arrested on 05.08.2023 and remanded into custody till today. Charge sheet has been submitted by the investigating authority on 24.07.2023. However, charge has not been framed against the petitioner till date. He further submits that nothing incriminating or contraband has ever been found from the premises of M/S Ardor Drugs Pvt. Ltd. nor found from the direct, indirect or constructive possession of Petitioner Mehul Desai or Harshal Desai. The material is found and seized from the house of Jangminthang Guite of Imphal (Manipur) which is not having any connection or nexus with the applicant (Petitioner) Mehul Desai who is resident of Gujarat State. The accused/petitioner is an innocent and has nothing to do with the alleged offence in connection with the charge of

Spl. Trial (NDPS) Case No. 26 of 2023. The allegation against the petitioner are that 110.5 Kg (gross) of white Color loose tablets believed to be Pseudoephedrine were seized from one person namely, Jangminthang Guite. Such allegation cannot be presumed on its fact value that were supplied by the petitioner and would always remain subject matter at Trial Court during trial.

[9] Learned counsel for the petitioner further submits that the statement of Bhadresh Patel (Accused No. 3) is not admissible in evidence in view of the provision of Section 25 and 26 of the Indian Evidence Act and more particularly in view of recent judgment of larger bench of the Hon'ble Apex Court in the case of Toofan Singh vs. State of UP. Except statement of Bhadresh Patel (Accused No. 3) and his two employees (two employees are also accused in very case) there is no other material available which may even remotely connect the petitioner/accused Mehul Desai with the alleged offence. If we exclude the statements of Bhadresh Patel (Accused No. 3) and his two employees then nothing remains against the petitioner/accused Mehul Desai which can be said a prima facie material against him and the material seized is neither Narcotics nor Psychotropics Substances. But, it is only a controlled drug for which the company M/s Ardor Drugs Pvt. Ltd. is having a legal and valid license. Further, the material seized is neither Narcotics Drugs nor Psychotropics substance; hence the classification of small quantity, moderate quantity and commercial

quantity etc. would not be applicable to the case of the petitioner/accused. The Petitioner filed bail application before the concerned Court being under Cril. Misc (B) case No. 128 of 2023 praying for releasing him on bail; however, the bail application was rejected by the Ld. Special Judge (ND&PS) Manipur on 31/11/2023. Charge sheet has been submitted in connection with the said FIR Case and registered as Special Trail Case (NDPS) No. 26 of 2023 Ref. NCB Crime No. 02/NCB/Imp/2023, dated 03.03.2023 and the present stage of the said trail case is for charge hearing. Hence, the present Bail Petition.

[10] Learned counsel for the petitioner relied upon the following Judgments:

1. Sunil Fulchand Shah Vs. Union of India, AIR 2000 SC 1023;
2. State of U.P. through CBI Vs. Amarmani Tripathi, (2005) 8 SCC 21: AIR 2005 SC 3490;
3. Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr, (2004) 7 SCC 528: 2004 SCC (Cril) 1977;
4. Hussainara Khatoon & Ors Vs. Home Secretary, State of Bihar, Patna, AIR 1979 SC 1360: (1980) 1 SCC 81;
5. 2024 SCC Online SC 1920 – [Manish Sisodia Vs. Directorate of Enforcement]
6. (2012) 1 SCC 40 in Sanjay Chandra Vs. Central Bureau of Investigation

[11] On 22.02.2024, the learned counsel for the respondent submitted his affidavit-in-opposition on behalf of the respondent narrating the prosecution story stating that upon receiving a specific information from a reliable source on 03.03.2023 about illegal storage of Heroin and Pseudoephedrine in the house of Jangminthang Guite of Moreh, Tengnoupal, a team of NCB raided the house of Jangminthang Guite and recovered huge quantity of Pseudoephedrine tablets from the kitchen of the house including Heroin. The said Pseudoephedrine recovered weighted around 110.5 Kg and were labeled as – “CETRIZINE HYDROCHLORIDE TABLETS 10 MG LEVOCET”, manufactured by Sunview Biotech, Gandhinagar. Accordingly, Nemkhohat Guite (mother of Jangminthang Guite) was arrested on 04.03.2023 and from her confessional statement and reasonable belief she was booked under NCB Crime No. 02/NCB/Imp/2023 under Section 8(C) & 9A r/w S.21(C), 25A, 25 & 29 of ND&PS Act, by following due procedure prescribed under the Act. He further submits that in the follow-up action, as well as from the establishments from the CDRs, four other accused were arrested by NCB team and resultantly, after completion of the investigation, final report/complaint against all the accused persons were submitted on 03.07.2023 before the Special Judge ND & PS, Imphal, Manipur with the prayer to issue warrant of arrest against Mehul Desai (the present Petitioner) & 5 other suspected persons for their gross involvement/conspiracy in transporting

Pseudoephedrine to foreign countries in order to manufacture narcotics drugs i.e. Methamphetamine. Subsequently, arrest warrant against the petitioner Mehul Desai was executed on 05.08.2023 from the residence of Mehul Desai in presence of his family member at Surat and thereafter, the petitioner was lodged in judicial custody on 14.08.2024, accordingly, additional Final report/complaint was also filed against the petitioner Mehul Desai on 03.10.2023.

[12] Learned counsel for the respondent in his affidavit-in-opposition mentioned the following involvement of the accused/petitioner in NCB Crime No. 02/NCB/IMP/2023 u/s 8(C) & 9A R/W S. 21(C), 25A, 25 & 29 of the ND&PS Act that:

1. The accused/petitioner (Mehul Desai) being one of the Ex-Directors of M/S Ardor Drug Pvt. Ltd, Ahmedabad, Gujarat is also one of the masterminds for the entire modus operandi of this illegal trade business. Very surprisingly, the Petitioner Mehul Desai has been receiving a sum of Rs 50,000/- every month from the M/S Ardor Drug Pvt. Ltd, despite having retired from the post of Director of the said company.
2. The seized Pseudoephedrine tablets were faked labelled as "CETRIZINE HYDROCHLORIDE TABLETS 10 MG LEVOCET" weighing 110.5kg was brought from Ahmedabad to Moreh via Delhi during the month of February 2023 in violation of the existing laws in force under the mastermind of the accused/petitioner namely Mehul Desai, accused Harshal Desai, Bradesh

Patel in conspiracy with the other co-accused. The accused Mehul Desai is also one of the main king-pin behind this inter-state trafficking of pseudoephedrine tablets from Gujarat to Myanmar, he was also one of the main suppliers who was directly supplying the drugs to Myanmar through his associates- Harshal Desai, Bradesh Patel, Abdul Wakil and other co-accused after misusing the unique registration number allotted to its company Ardor Drugs Pvt. Ltd., in lure of earning more money by diverting Pseudoephedrine to illicit channel.

3. The accused/petitioner (Mehul Desai) is involved in the connivance with Harshal Desai and Bradesh Patel for generating bogus bill of various pseudoephedrine tablets. For such prior offences they had already been arrested by the Directorate of Revenue Intelligence, Surat under Crime No. 1 of 2020 and they were on bail during the execution of arrest of warrant issued by the Special Judge ND&PS, Manipur.
4. The accused/Petitioner (Mehul Desai) himself admitted in his statement that he had delivered the consignment of Pseudoephedrine Tablets as per the direction of Harshal Desai to the tempo driver namely, Videsh Bhai Patel on 19.01.2023 for further delivery to M/S Recover Healthcare in Ahmedabad.
5. The accused/Petitioner (Mehul Desai) in connivance with Harshal Desai generated fake/bogus billing in various Pseudoephedrine content drugs in the name of M/S Recover Healthcare, Ahmedabad and actually he never supplied any drugs to M/S Recover Healthcare for which he deposited an amount of Rs. 10 lakhs to

the account of M/s Recover Healthcare as a commission against generating fake/bogus billings.

6. The accused/petitioner mastermind the entire modus operandi of the above illegal trade by performing himself as an experience aid of Harshal Desai and the company online registration of filing GST and TDS is done in his mobile number in which OTP is generated through his mobile number. Further M/s Ardor company email ID is still being run in his (Mehul Desai) name.
7. There has been similar kind of seizure of 13 Lakh Pseudoephedrine tablets affected in Sagaing Region of Myanmar in August 2020. Again 39 lakhs of pseudoephedrine tablets in the brand Colzen containing Pseudoephedrine were seized in Champai, Mizoram in March 2023.
8. The seized Pseudoephedrine tablets is not only controlled medicine, but it is the main raw material for processing of Methamphetamine (ATS)- a banned drug in neighbouring country Myanmar. And as said earlier also, it is a cause of concern for National Security.
9. The seized 533 packets in the present case are the part of 1500 packets of Pseudoephedrine tablets that was manufactured by Ardor Drugs Pvt. Ltd., Songadh, Tapi. The rest 967 packets got succeeded to go through Moreh border to Myanmar. Thus, this case is also having international linkage.
10. The present Petitioner is also one of the main kingpin who has diverted the huge quantity of Pseudoephedrine tablets into illegal channel which has

somehow crossed Myanmar border either from Mizoram side or Manipur side.

11. The accused/petitioner (Mehul Desai) has criminal antecedents and he is on bail in NDPS case No. 48/2020 registered at Principal District and Session Court, Surat, Gujarat.
12. This is the crime committed by the petitioner while being released on bail in connection with NDPS case no. 48/2020 registered at Principal District and Session Court, Surat, Gujarat which was initiated by DRI Surat and final complaint/charge-sheet has been filed by DRI Surat and presently the case is under trial.
13. The accused/Petitioner Mehul Desai and accused Harshal Desai generated fake tax invoice but not delivered any drug to M/s Recover Healthcare which is already proved with the statement of the accountant, Kriti Patel of M/s Recover Healthcare.
14. There are still various new aspects which are yet to be explored to ascertain the further linkage or the source of the seized 110.5 kg of Pseudoephedrine tablets, which will not be possible if the accused is granted bail at this juncture.
15. During the course of investigation, house search at the residence of Nitin Panchal (one of the accused in the case from Gujarat) was conducted by NCB and recover some documents of M/s Elite medical store, Aizawl which surfaced in the instant case. Follow up action was conducted at M/s Elite Medical Store, Aizawl, Mizoram by team NCB, Guwahati on dated 03/11/2023 and statement of the proprietor of M/s

Elite store recorded. Accordingly, letter vide NCB 02/NCB/Imp/2023 dated 03.11.2023 to the State Drug Controller, Mizoram, Aizawl was requested to enquire and take necessary action as per D&C Act and other relevant laws against diversion of pseudoephedrine tablets. Directorate of Health Services-Food & Drugs Administration wing- Mizoram vide order dated 21 Feb, 2024 cancelled the Drug License of Elite Medical store.

16. Enquiry conducted at NCB, Ahmedabad on 12.12.2023 regarding details of URN issued to M/s Ardor drug Pvt. Ltd. Accordingly, letter issued to ZD, Ahmedabad on dated 19.12.2023 seeking details on the URN issued by NCB, Ahmedabad. Further, letter was also issued to the Zonal Director, NCB, Ahmedabad Zonal Unit on 15.03.2024 with a request to cancel the URN of M/s Ardor Drug Pvt. Ltd. issued by NCB Ahmedabad Zonal Unit or any other URN issued to the accused. Previously, NCB, Ahmedabad informed that proposal for cancellation of URN of M/s Ardor Drug Pvt. Ltd. in 2021 was sent to concerned DDG(R) for violation of the provision of RCS order 2013 as the company premises was raided by DRI, Surat, July 2020 and mismatch in quantities of Ephedrine and Pseudoephedrine found.
17. The statements of 06 employees of M/s Ardor Drug Pvt. Ltd. was recorded at NCB, Ahmedabad on 12.12.2023 to 14.12.2023, all the 06 employees have stated that details of record of procurement/production/sales/marketing/transportation of pseudoephedrine/ ephedrine are maintained and

control by Harshal & Mehul Desai. All bills/invoices are generated by Harshal and Mehul which clearly shows that the employees are made to work as per the instruction of Harshal and Mehul Desai.

18. Further investigation and financial investigation is going on to trace and break the chain of illegal trade considering the gravity of the offense committed by the petitioner which is serious in nature. Therefore, considering the key role being played by the accused in the instant case, mere long incarceration of an accused in judicial custody should not be a ground to release the accused on bail as it will frustrate the whole objective of stringent law laid down by the parliament to combat illegal trafficking of drugs and will perpetuate to further crime, the same principle has been laid in a plethora of cases.
19. Mehul Desai has admitted in his statement during investigation that he along with Harshal Desai used to generate tax invoice in the name of M/s Recover Healthcare but the products mentioned in the tax invoice were supplied to some other parties. They repeatedly used to generate false bills with the name of some other products for the supply of pseudoephedrine-based tablet to Bradesh Patel to sell the said Pseudoephedrine tablets. For the said purpose they paid 10 lakhs as commission to Bradesh Patel which is corroborated with the bank account statement.

[13] Learned counsel for the respondent further contended that the accused Mehul Desai has criminal antecedent and he was on

bail in ND&PS Case No. 48 of 2020 registered at Principal District and Session Court, Surat, Gujarat. While the accused/petitioner was on bail, he has committed the present offence which is registered under NCB Crime No. 02/NCB/IMP/2023 under section 8(C) & 9A R/W S.21(C), 25A, & 29 OF ND&PS Act by the NCB, Division Unit Imphal, Manipur. Because of being a criminal antecedent, the accused/Petitioner (Mehul Desai) was detained under PITNDPS Act by issuing a detention order dated 28-02-2024 through the Joint Secretary, Ministry of Finance and the said detention order was confirmed from the Advisory Board. The accused/Petitioner had challenged the said detention order dated 28.02.2024 issued by the Government of India, Ministry of Finance before the Hon'ble High Court of Manipur in WP(Cril) No. 10 of 2024 and Hon'ble Court set aside the detention order vide order dated 26.07.2024 which is reproduced as follows:

"[7] In the present case, the petitioner was already arrested and kept in judicial custody in connection with the seizure of a commercial quantity of narcotic drugs and therefore, Section 37 of the Narcotics Drugs and Psychotropic Substance Act, 1985 would have application and grant of bail would be subject to the stringent conditions provided thereunder. Nothing is mentioned in the impugned detention order that the detaining authority has arrived at his subjective satisfaction that the petitioner is likely to be released on bail. Only in the ground of detention, the detaining authority merely referred to the fact that a bail application had been filed without deciding whether there was a likelihood of the petitioner being released on bail, notwithstanding the applicability of Section 37 of the ND & PS Act, 1985 and passed the impugned detention order. Accordingly, we are of the considered view that the detaining authority passed the impugned detention order without application of mind and in a mechanical manner and on this ground alone, the impugned detention orders are liable to be quashed and set aside.

[9] Having regard to the facts and circumstances of the present case and for the findings and reasons given hereinabove, we are of the considered view that the detention orders passed against the petitioner cannot be sustained. Accordingly, the impugned Detention Order dated 28.02.2024 and the impugned Confirmation Order dated 14.05.2024 are hereby quashed and set aside. Further, the petitioner, presently incarcerated in the Sajiwa Central Jail, Manipur, shall be set at liberty forthwith unless his continued detention is validly required in connection with any other cases. With the aforesaid direction, the present petition is allowed. Parties are to be their own costs."

[14] Learned counsel for the respondent relied upon the following Judgment;

1. 2023 (3) SCR 826 – [WP(Criminal) No. 60 of 2023 – Ritu Chhabaria vs Union of India – Supreme court of India]
2. (2018) 8 SCC 271 – [Surinder Kumar Khanna Vs Intelligence Officer Directorate of Revenue Intelligence]
3. Special Leave to Appeal (Crl.) No. 4142/2021
4. WP(Cril.) No. 10 of 2024 – [Mehul Desai Vs NCB – relevant para no. 4 & 7]
5. (1998) 6 SCC 507 – [PR Despande Vs Maruti Balaram Haibatti – relevant para no. 5]
6. Bail Application No. 1939 of 2021 of the Hon'ble High Court of Delhi – [Asante Pinket Owusu Vs NCB – relevant Para nos. 3, 5, 20, 21 , 22 and 23]
7. (2021) 5 SCC 430 – [Union of India vs Prateek Shukla relevant para nos. 4, 8.1 to 8.6, 12 and 14]
5. Bail Application no. 5030 of 2012 of the High Court of Kerala – [Karuthan Ponnaiya & Anr Vs Senior NCB, State of Kerala – relevant para nos. 5, 8 and 10]

[15] Heard the learned counsels for the parties at length and also perused the application and reply affidavit. The main allegation against the accused/petitioner are that the present accused/petitioner is a former director as well as an employee of the company viz. Ardor Drugs Pvt. Ltd. is that he is actively involved in an illegal supply of Pseudoephedrine (controlled substance under ND & PS Act) based tablets to the other accused Bhadresh Patel of M/s Recover Healthcare. The said Ardor Drugs Pvt. Ltd. prepared/manufactured pharmaceutical formulations including Pseudoephedrine containing formulations like Asifed, Phifed etc. and that the accused was actively involved in an illegal supply of a huge quantity of Pseudoephedrine based Phifed tablets. Further, it was alleged that the accused/applicant involved in supplying 15,00,000 of the said Phifed tablets inside 26 carton boxes to the said accused namely, Bhadresh Patel, owner of M/s Recover Healthcare on 19.01.2023 under a fake billing of Admos-SR.

Further, it is alleged that the accused/petitioner got commission of Rs. 1 per strip of 10 tablets of Pseudoephedrine to the said accused Bhadresh Patel for accepting the bogus billing tax invoice. Further, it is alleged that as per stock register of the company, Ardor Drugs Pvt. Ltd. the company purchased a raw material namely, Pseudoephedrine Hydrochloride powder from one, GC Chemie Pharmie Ltd., Mumbai, Andheri manufacture of said

Asifed, Phifed and a scrutiny of the tax invoices report from the said GC Chemie Pharmie Ltd. revealed that there was unaccounted distribution of more than 2 Crores Pseudoephedrine based drugs (Asifed, Phifed) by the Ardor Drugs Pvt. Ltd.

It is alleged that the accused was actively involved in supply of said Pseudoephedrine based tablets under bogus bills or by generating fake bills with the name of some other products and by actually supplying the products mentioned in the bills/tax invoices in the name of M/s Recover Healthcare to some other person, for which an amount of Rs. 10 lakhs was paid to the account of M/s Recover Healthcare as a commission for accepting fake / bogus bills. It is also alleged that the Ardor Drugs Pvt. Ltd. used one "Bhavna Roadways" to show the transportation of drugs to the M/s Recover Healthcare looked genuine, but in that transportation, it sent only carton boxes without any medicinal stuffs mentioned in the invoices but filled with pieces of marbles and scraps to increase the weight. Photographs of such carton boxes containing pieces of marbles and scraps which were sent by the Ardor Drugs Pvt. Ltd. to the M/s Recover Healthcare, having the stickers of Bhavna Roadways are said to have been produced by one Kirti Kumar Patel (apparently a staff of M/s Recover Healthcare), whose statement has been recorded under Section 67 of the NDPS Act. As per his said statement, M/s Recover Healthcare received only 1500 packets of Phifed tablets containing

Pseudoephedrine, which were sent by the Ardor Drugs Pvt. Ltd. in the billing of Admos-SR on 19.01.2023 and no other pharmaceutical drugs from 2020 till 2022 but the relevant record at M/s Recover Healthcare shows false entry for receipts of other pharmaceutical drugs Asifed T, Bromofed and Prasma including Phifed from the Ardor Drugs Pvt. Ltd. when the latter has not actually supplied the said other drugs.

[16] On further perusal of the pleadings, it is also seen that the present accused/petitioner was also arrested in connection with another FIR case for the seizure of more than 15 lakh tablets of Tramadol and shortage of huge quantity of more than 312 kg of raw Pseudoephedrine on 08.07.2022 and he is at present released on bail under NDPS Case No. 48 of 2020 by the Principal District & Sessions Court Surat, Gujarat.

[17] The Ld. Special Court (NDPS), after hearing the parties, rejected bail application of the present accused and another, Shri Harshal Desai and in consideration of the present application, this Court is of the opinion that the observation made in rejecting the said bail application needs to take consideration and for the same, the Para No. 5 & 6 of the impugned order of the Ld. Special Judge (NDPS), Manipur at Lamphelpat is reproduced herein below:

"5. *It is settled position of law that the provisions of the Drugs and Cosmetics Act, 1940 and the Narcotic Drugs and Psychotropic Substances Act, 1985 are in addition to the provisions of each other i.e. provisions of both the Acts are required to be simultaneously complied with in relation to pharmaceutical bulk drugs and pharmaceutical formulation which also fall under the ambit of the NDPS Act, 1985, (Mohd. Sahabuddin & Another Vs. Deshpande (2014) 13 SCC 1). It is to be noted that mere holding a license under the Drugs and Cosmetics Act and the Rules framed thereunder does not provide any immunity from the rigors of the applicability of the NDPS Act and the Rules framed thereunder.*

6. *It appears prima facie from the materials on record including the statement of the witnesses under section 67 of the NDPS Act, that the accused persons/applicants, who are admittedly ex-Director/employee and one of the Directors of the company namely Ardor Drugs Pvt. Ltd., are persons actively engaged for sale or for distribution of pharmaceutical formulations, which apparently include drugs and substances covered under the ambit of the Narcotic Drugs and Psychotropic Substances Act, 1985 and that they were actively involved in falsifying the accounts or records of the company by supplying the said Pseudoephedrine (controlled substance under ND & PS Act) based Phifed tablets in the name of another non-offending drug ADMOS-SR under a bogus or fake bill/tax invoices. It appears prima facie from materials on record that the two (2) accused persons are actively involved in trafficking of the said pseudoephedrine based pharmaceutical drugs. As per record, the stage of the case is production of the rest of the accused and charge hearing."*

[18] After going through the above observation made by the Ld. Special Judge (NDPS), Manipur, I am of the considered view that the Ld. Special Judge's observation and reasoning in dismissing the bail application of the accused/petitioner is reasonable enough considering the seriousness of the allegation made against the present accused.

[19] I have carefully examined the entire available records, impugned order of the Ld. Special Judge (NDPS), Manipur and particularly the allegations leveled against the accused as narrated above. In view of the nature and gravity of the offence, I am not inclined to allow the present bail application filed by the present accused/petitioner.

Hence, this application is dismissed with observation that the Ld. Trial Judge is directed to try and dispose of the case at the earliest. Liberty is given to the petitioner/accused to approach this Court, if the Trial Court failed to conclude the trial at the reasonable time.

JUDGE

FR/NFR

Lucy/Bipin