



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

Date of decision: 27th SEPTEMBER, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 3093/2024**

VIPHIL JAIN

.....Petitioner

Through: Mr. Arvind Kumar, Mr. Subit Kumar Singh, Mr. Ankit Kumar Vats, Mr. Gulshan Kumar and Mr. Priyanshu Jaiswal, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for the State. SI Ashish Sharma, ISC, Crime Branch, Chanakyapuri.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking 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 Petition are that on 09.03.2024 secret information regarding a person, namely, Vipphil Jain @ Bablu, i.e. the Petitioner herein, 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. 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. 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, i.e. the Petitioner herein 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. 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.

3. Investigation was carried out and simultaneous raids were conducted at various other places and 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 were arrested from different places.

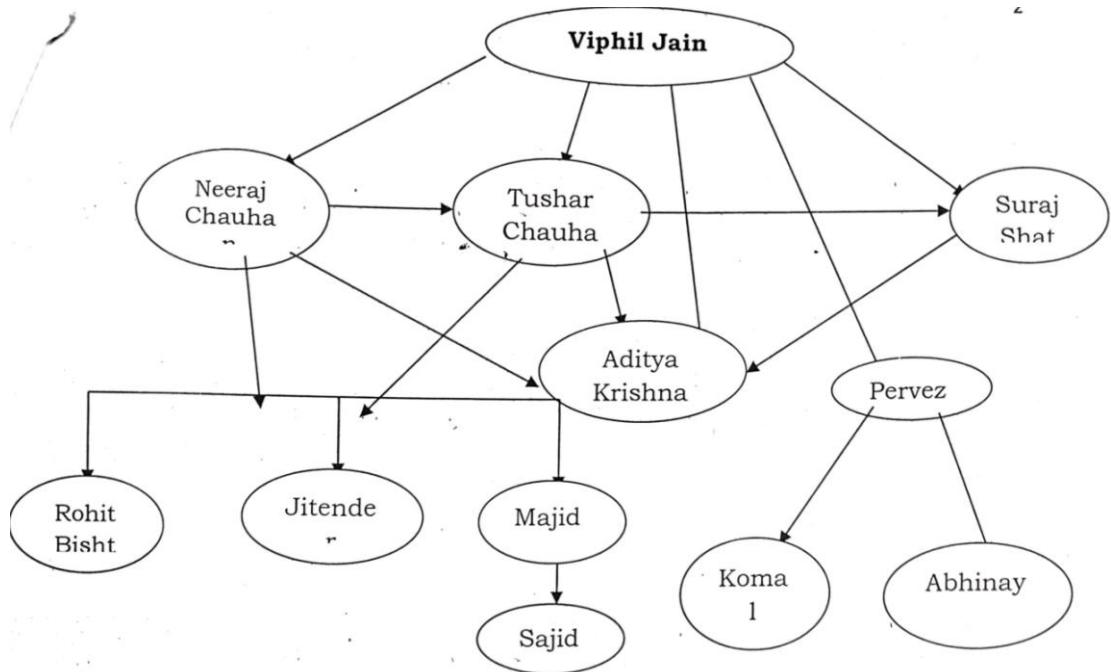
4. During investigation it was revealed that the Petitioner herein is the kingpin of the racket and he had experience of 15 years in pharmacy profession. It is stated that in early 2023, Petitioner herein came with the idea of supplying anti-cancer injections as these were not easily available in



the market and are also very expensive. It is stated that the Petitioner came up with the idea of procuring these injections from hospitals through his sources and selling the same in the open market. It is stated that the Petitioner also planned to procure the empty anti-cancer injections and to refill them with Fluconazole injections. It is stated that the Petitioner procured the empty anti-cancer injections from co-accused persons Parvez, Neeraj and Tushar and refilled them with antifungal injections at his rented facility at DLF Capital Greens, Moti Nagar, New Delhi. Investigation further revealed that a major chunk of supply of spurious anti- cancer injections went through accused Neeraj Chauhan and Aditya Krishna etc. It is stated that during investigation amount of Rs 17,35,000/- earned by the Petitioner herien through crime proceeds deposited in ICICI Bank was frozen and investment amount Rs. 46,58,562/- in two flats at DLF-I, Mid Town, Moti Nagar, Delhi was also got frozen. One Fortuner car worth Rs. 54 lacs, purchased by the Petitioner through crime proceeds has also been seized and taken into police possession. Bank account transactions of the Petitioner herein with co- accused persons namely, Tushar Chauhan, Suraj Shat and witness/purchaser Delhi Medicine (Akshay, Chandigarh) and Whatsapp Chat of the Petitioner herein with his other associates namely, Aditya Krishna & Priyanka Corporation, Mumbai (Seller of Rubber Cap and Aluminum Cap) were taken into custody during investigation. Material on record shows that the Call Data Record of accused reflects that he was in constant touch with other co-accused, namely, Aditya Krishna, Neeraj Chauhan, Parvez Malik, Suraj Shat & Tushar Chauhan and their call timings and locations corroborate their presence.



5. After investigation charge-sheet has been filed in the matter.
6. Petitioner approached the Trial Court twice for grant of bail but his applications for grant of bail were rejected vide Orders dated 09.08.2024 and 14.08.2024.
7. Petitioner has, thereafter, approached this Court by filing the present bail application on the ground that this Court vide Order dated 29.07.2024 has granted bail to the co-accused – Aditya Krishna and Tushar Chauhan.
8. Notice was issued and Status Report has been filed. Along with the Status Report a chart showing involvement of the Petitioner and other accused in the entire cartel of manufacture and supply of spurious medicines has been given and the said chart is being reproduced as under:



9. Learned Counsel for the Petitioner contends that the Petitioner is entitled to bail on the ground of parity with the other co-accused persons who have been granted bail by this Court. He also relies on the Order dated



21.08.2023, passed by the Apex Court in **SLP (Crl.) No.8432/2023**, titled as Suraj Vijay Agarwal v. The State of Maharashtra, wherein the Apex Court had granted bail to the Petitioner therein on the ground of parity. The learned Counsel for the Petitioner also places reliance on the Judgment passed by the Apex Court in Javed Gulam Nabi Shaikh v. State of Maharashtra and Another, **2024 SCC OnLine SC 1693**, wherein the Apex Court has granted bail to the Petitioner therein who was accused under the Unlawful Activities (Prevention) Act, 1967. He, therefore, states that in view of the fact that the other co-accused have been released on bail, the Petitioner also be released on bail.

10. *Per contra*, learned APP for the State vehemently opposes the present bail application on the ground that the Petitioner herein is the kingpin of the entire cartel and the other co-accused persons were only pawns. He states that the WhatsApp chats of the Petitioner herein with co-accused Aditya Krishna & Priyanka Corporation, Mumbai, which is the seller of Rubber Cap and Aluminum Cap, are incriminating in nature and establishes that he was wilfully involved in preparing life threatening, ill-perceived and easy money making business. He further states that the CDR of the Petitioner herein reflects that he was in constant touch with the other co-accused persons. He states that the Enforcement Directorate has also initiated investigation under Prevention of Money Laundering Act (PMLA) 2002 pertaining to present FIR. He states that 17 mobile phones have been seized from the accused persons and have been deposited in CFSL. He states that there is voluminous data in these mobile phones which is yet to be recovered and analyzed and many victims are still to be identified/traced and, therefore, bail ought not to be granted to the Petitioner at this stage.



11. Heard the Counsels and perused the material on record.
12. The primary reason as to why this Court granted bail to the other co-accused is that they were only pawns whereas the Petitioner herein is the kingpin of the entire racket. The spurious injections which were primarily being manufactured by the Petitioner herein and were being sold in the market have been found to be of sub-standard quality and are harmful for use. Since the injections have low and compromised efficacy, there were chances that the patients, to whom these injections were given, can have progression or relapse of cancer and these progression and relapse of cancer can also cause death of the patient. The Petitioner, who has experience in the field of pharmacy, was well aware of his act and he was wilfully involved in this life threatening and ill-perceived business. Releasing the Petitioner at this juncture can result in tampering of evidence.
13. The parameters that have to be considered for grant of bail have been succinctly laid down by the Apex Court and the Courts have to see the following aspects before allowing or rejecting a bail application:
 - a. nature and gravity of the charge;
 - b. severity of the punishment in case of conviction;
 - c. reasonable apprehension of witness being influenced;
 - d. prima facie or reasonable ground to believe that the accused had committed the offence;
 - e. character, behaviour, means, position and standing of the accused;
 - f. danger of justice being thwarted by grant of bail.

(Refer: Ram Govind Upadhyay vs. Sudarshan Singh and Others, (2002) 3 SCC 598 and Prasanta Kumar Sarkar vs. Ashis Chatterjee and Another,



(2010) 14 SCC 496)

14. Applying the law laid down by the Apex Court to the facts of the present case, though this Court has granted bail to the co-accused, but the ground of parity cannot be applied to the Petitioner herein as he is the main person who was heading the racket of manufacture and supply of spurious injections. He is aware of the entire network. He knows about all the persons who are involved in this network and the trail of money.

15. The reliance placed by the learned Counsel for the Petitioner on Suraj Vijay Agarwal v. The State of Maharashtra (supra) cannot help the Petitioner herein as the Order passed by the Apex Court in that case is limited to the facts of that case only. Similarly, the reliance placed by the learned Counsel for the Petitioner in Javed Gulam Nabi Shaikh v. State of Maharashtra and Another (supra) wherein the Apex Court had granted bail to the Petitioner therein who was accused for offences under UAPA also cannot be of any help to the Petitioner herein as in that case the Petitioner therein was in incarceration for about four years which is not the case in the present case.

16. In the present case, this Court is of the opinion that if the Petitioner is released on bail at this juncture, the likelihood of the Petitioner tampering with evidence is extremely high. The Petitioner has amassed good wealth by manufacturing spurious cancer injections and, therefore, if released on bail, the danger of the Petitioner absconding cannot be ruled out. Looking at the qualification of the Petitioner and his contacts, the chances of the Petitioner repeating the offence also cannot be ruled out. Since the parameters of grant of bail, as laid down by the Apex Court, are against the Petitioner, despite the fact that other co-accused have been granted bail by this Court, this



Court is not inclined to grant bail to the Petitioner herein in the facts and circumstances of the present case.

17. Accordingly, the present Bail Application is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 27, 2024

Rahul