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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**CRM-M-34429-2024 (O&M)
Decided on: 19.07.2024

Pawan Jain

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Keshav Pratap Singh, Advocate
For the petitioner.

Mr. Vikrant Pamboo, Sr. DAG, Haryana.

ANOOP CHITKARA, J.

Complaint No.COMA-10-2017 dated 12.01.2017 registered under Section 18(c) and 18-A of Drugs and Cosmetics Act 1940 titled as 'State (Through Drugs Control Officer Gurgaon) versus Pawan Jain', District Gurugram

The matter was passed over and was taken up after deciding the petitioner's other petition i.e. CRM-M-34459-2024.

CRM-28684-2024

Allowed, as prayed for.

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1. The petitioner apprehending arrest in the complaint captioned above has come up before this Court under Section 482 of The Bharatiya Nagarik Suraksha Sanhita, 2023, [in short 'BNSS, 2023'], seeking anticipatory bail.
2. In paragraph 16 of the bail petition, the accused declares that he has no criminal antecedents.
3. Petitioner's counsel prays for bail and does not object to imposing any stringent conditions. Petitioner's counsel argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. Facts of the case are being taken from the complaint dated 12.01.2017, which reads



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as follows:-

“2. That on dated 01-08-2014 Sh Lalit K Goel Senior Drugs Control officer Gurgaon Zone, Sh Manmohan Taneja Senior Drugs Control officer Rohtak Zone, Smt Pooja Chaudhary. the then Drugs Control officer Gurgaon and Sh Amandeep Chauhan the then Drugs Control officer Rewari reached M/S Green Leaf Tradex Pvt. Limited (Pan Shop), Inside Kingdom of Dreams, Sec-29, Gurgaon in order to verify a secret information that M/S Green Leaf Tradex Pvt. Limited (Pan Shop) is involved in sale/purchase of electric cigarettes claiming to be containing nicotine on its label without having any valid Retail Sale Drugs License or Whole Sale Drugs License as required under the Drugs & Cosmetic Act 1940 and Rules 1945.

3. That during inspection Sh. Pawan Jain was found present and introduced himself as Overall Incharge of firm and responsible director of M/S Green Leaf Tradex Pvt. Limited (Pan Shop) The Officer disclosed Identity and purpose of visit Further the premises of firm was searched During Inspection / rald firm was found indulged in selling or stocking or distributing or exhibit (or offering) for sale three (3) different types of products i.e. containing Nicotine (as per label) which fall under the definition of Drugs u/s 3 (b) of the Drugs and Cosmetics Act 1940 and Rules 1945 (here in after referred to as the Act). Sh Pawan Jain was found supplying/selling these products to the people by means of e-cigarettes and charging money from them in your above said premises. Sample of these products were taken as on Form-17 vide no PCG/2014/73 to PCG/2014/75 as per the procedure described in the Act Fair price Rs 11,100/- were offered to you, but you refused to take the same Form-17A was also prepared Copies of Form-17 and Form-17 A were given to Sh Pawan Jain on the spot These samples were sent to govt. Analyst Haryana vide Form 18 The original Form 17, 18 and Form 17-A with his statement are placed at Annexure -2.

4. That Sh. Pawan Jain could not produce any valid Drug License u/s 18 (c) of the Act for selling the products mentioned in above table claiming nicotine on the label which falls under the drugs and also could not disclose the name of the person from where you have acquired the said products containing Nicotine at the time of inspection u/s 18-A of the Act.”

5. Counsel for the State, Mr. Vikrant Pamboo, Sr. DAG, Haryana, opposes the bail and submits that the present petition under Section 482 BNSS is not maintainable because proclamation proceedings were issued against the petitioner vide order dated 30.05.2024. Later, vide another order dated 03.07.2024, the Chief Judicial Magistrate issued fresh proclamation warrants under Section 82 CrPC, 1973, and directed the petitioner to appear on 07.09.2024.

6. Counsel for the petitioner submits that the petitioner has not been declared as a proclaimed offender, and he has been asked to appear before the trial Court on



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07.09.2024, and he undertakes to appear even before that date. Counsel further submits that he has challenged the said proclamation by filing CRM-M-34459-2024, which this Court has already allowed the said petition, and the proclamation order has been quashed and set aside.

7. An analysis of the pleadings and arguments does not restrict the petitioner's rights to file a statutory bail under S. 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to Ss. 485(4), 486, 491, and 492 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and the terms and conditions on bail bonds.

8. Given above, in the event of arrest, the petitioner shall be released on bail in the FIR captioned above in the following terms:

(a). Petitioner to furnish a personal bond of Rs. Ten thousand (INR 10,000/).

(b). To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned Court, before whom the bonds are required to be furnished. If the concerned Judicial Magistrate is unavailable, to be furnished before any other nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear in court, such surety can produce the accused.

(c). While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

9. Although this Court has directed the petitioner to furnish surety, in terms of Ss. 485(4), 486, 491, and 492 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the ground reality is that when the sureties appear before the Courts, the Investigators, or the Attesting Officers, insist on verification of such sureties from Lambardar, Ward members, etc. It is common knowledge that many people who identify the authenticity of the sureties take money to cover traveling expenses, loss of day's earnings, or charges for



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providing service, which is not only illegal and impermissible but also unethical and immoral, and this loophole must be plugged in, and the following directions are likely to shut down the business of illicit service charges.

10. Given the identification of sureties through the AADHAR card and further verification of the genuineness of the AADHAR number through [MAADHAR](#) ([Google Play Store](#)¹ or [Apple App Store](#)²), which is more authentic and almost foolproof, there shall be no need or justification for verification of sureties through Lambardar, Nambardar, Sarpanch, Pradhan, Panch, Kshetra Panchayat Sadasya, Gram Sewak, BDC Members, MC ward members, etc. It shall be sufficient for the Officer/Court attesting the bonds to declare the verification and authentication of the surety's identity through AADHAR, either themselves or through staff or even by delegation, and they shall not insist upon identification of sureties through Lambardars, ward members, etc., and such identification through them shall be done only when AADHAR identification is not available.

11. When the accused is not in a position to furnish surety, it may be brought to the notice of the concerned Officer/Court which is accepting the bonds, and if the said Officer/Court is satisfied with the petitioner's inability, then it shall be permissible for the said Officer/Court to reduce the bond amount or even exempt surety bond.

12. It would be appropriate to mention that while registering power of attorneys, sale deeds and other documents, if the government officers verify the witnesses and the executants through MAADHAR as mentioned above, it would certainly reduce the fraudulent transactions. Therefore, the Registry of this Court to send copy of this order to Chief Secretaries of Punjab, Haryana and Administrator of Chandigarh and they are requested to consider this aspect. Copies be also sent to all Session Judges of States of Punjab, Haryana and Chandigarh.

Petition allowed with above said observations. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

19.07.2024

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Whether speaking/reasoned: Yes

Whether reportable: **YES.**

¹ https://play.google.com/store/apps/details?id=in.gov.uidai.mAadhaarPlus&hl=en_IN

² <https://apps.apple.com/in/app/maadhaar/id1435469474>