

HIGH COURT OF PUNJAB AND HARYANA

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Date of Decision: 31.01.2024

CRM-M-49897-2023 (O&M)

NITIN LAMBA **...Petitioner**

V/S

STATE OF HARYANA ...Respondent

Legislation:

Sections 120-B, 201, 420, 465, 467, 468, 471, 474 of the Indian Penal Code (IPC)

Subject: Petition for regular bail in a case involving issuance of fraudulent educational certificates by a fictitious Board of Education.

Headnotes:

Criminal Appeal – Regular Bail Granting – Second petition for regular bail in FIR No. 166 under various sections of the IPC, including 120-B, 201, 420, and others – First petition dismissed, second petition allowed – Release of petitioner on regular bail during trial on furnishing bail/surety bonds to the satisfaction of the Trial Court. [Paras 1, 3, 7]

FIR and Allegations – Submission of fake educational certificates for registration as Pharmacist – Alleged use of certificates from unapproved institute (Board of School and Technical Education, Chhattisgarh) by Haryana residents – Scrutiny by Haryana State Pharmacy Council revealing the fraudulent nature of certificates and the institute. [Para 2]

Investigation Progress – Documentary evidence forming the basis of the case – Investigation completed and final report filed – Trial delay with none of the 54 prosecution witnesses examined – Further incarceration considered violative of Article 21 of the Constitution of India. [Para 5]

Judicial Observation – Reference to 'Satender Kumar Antil v. CBI' and 'Prabhakar Tiwari Vs. State of UP and Anr.' – Observations on the condition of undertrial prisoners in India and the impact on their rights – Arrest as a measure of last resort. [Para 6]

Bail Conditions – Petitioner released on regular bail during trial – Specific mention that observations in this order should not influence the trial's outcome. [Paras 7-8]

Referred Cases:

- Satender Kumar Antil v. CBI (2022) 10 SCC 51
- Prabhakar Tiwari Vs. State of UP and Anr. 2020(1) RCR (Criminal) 831
- Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others 2012(2) SCC 382

Representing Advocates:

Mr. Keshav Pratap Singh for petitioner

Ms. Geeta Sharma, DAG Haryana for respondent

HARPREET SINGH BRAR J. (Oral)

1. This is the second petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 166 dated 15.04.2022 registered under Sections 120-B, 201, 420, 465, 467, 468, 471 and 474 of Indian Penal Code (Section 201 of IPC added later on) at Police Station Sector-14, Panchkula District Panchkula. First petition seeking regular bail to the petitioner was dismissed by this Court on 30.11.2022.
- 3 Present FIR was lodged on the allegations that some candidates have applied for registration as Pharmacist with the Haryana State Pharmacy Council by submitting their certificates of qualification. All the candidates have shown that they have passed 10+2 examination from the Board of School and Technical of Education Chhattisgarh. It is relevant that all the candidates are residents of State of Haryana, however, all have shown that they had passed 10+2 examination from Chhattisgarh and from the

institute i.e. Board of School and Chhattisgarh Technical Education (hereinafter called the questioned institute). Since the Haryana State Pharmacy Council came to know after scrutiny of documents and qualification certificates that the questioned institute i.e. Board of School and Technical Education Chhattisgarh was /is the an unapproved institute and the Chhattisgarh Secondary Education Board also declared the temporary recognition as void-ab-initio. It is submitted here that the Chhattisgarh Secondary Education Board passed order dated 07.03.2015, wherein mentioned all details and specifically observed that the questioned institute was not having any valid recognition as per law at any point of time and the recognition/approval disputed was also ab-initio-void. Some necessary observations in the order dated 07.03.2015 passed by the Chhattisgarh Secondary Education Board relating of questioned institute that this questioned institute was registered on 11.10.2012 in the State of Haryana and all founding members of this trust were residents of Punjab, Haryana and Rajasthan. On 19.10.2012 i.e. after only 8 days of registration, this questioned institute applied for recognition from Chhattisgarh Secondary Secondary Classes. On 26.10.2012, the Chhattisgarh Secondary Education Board demanded 13 important/necessary documents regarding the existence of this trust and other documents regarding list of education center, study centres, schools run / operated by this questioned institute. However, all necessary documents/ records submitted /supplied were not submitted/supplied to the Chhattisgarh Secondary Education Board. It is also relevant to mention here that the questioned institute within 50 days of invalid temporary recognition i.e. on 7.11.2012, started issuing Mark sheets students to 10+2 examination Haryana etc. from 28.12.2012 and by mentioning name of two schools i.e. Noble Senior secondary School, Bilaspur and Sewa Bharti Shikshan Sansthan Jaspur, Chhattisgarh. It is also relevant to point out here that the signature of the principal of both school are same. This fact is also apparently malpractice on the part of the questioned institute. There is also no detail available with the questioned institute when they asked for the admissions, brochure and where they conducted classes etc. It is also submitted that this questioned institute was registered on 11.10.2012 and got the wrong temporary recognition on 7.11.2012 and without any infrastructure/school/examination etc. started issuing statement of marks of secondary education wrongly and illegally from December 2012. Therefore, it is apparent that within two

months of registration getting temporary as trust and recognition, this questioned institute started commercialization of education by issuing certificates and marks sheets. This questioned institute was having base in Haryana and most of its students between the age of 25 to 55 years and were from Haryana and they never visited Chhattisgarh and also not appeared in any examination but got the alleged bogus certificates of secondary education/10+2 class of this questioned institute. That since the 10+2 examination is also the basic and essential qualification for admission in pharmacy courses, therefore, for the Haryana State Pharmacy Council, it was/is necessary to make enquiry regarding authenticity of certificates of 10+2 submitted by the candidates for registration as Pharmacist with the Haryana State Pharmacy Council. Therefore, on 7.09.2020, the Haryana State Pharmacy Council sent a letter dated 7.9.2020 to the Chairman, Secretary etc. of Chhattisgarh Secondary Education Board Raipur and requested for information regarding the questioned institute and student passed from this institute. The copy of the letter dated 7.9.2020 is attached. , However, no information was received. Thereafter, a reminder letter dated 28.9.2020 also sent to the Chairman, Secretary etc. of Chhattisgarh Education Secondary Board Raipur and requested for information regarding the questioned institute and students, who passed from this questioned institute. The copy of the letter dated 28.9.2020 is attached. It is also relevant to submit here that the Haryana State Pharmacy Council has also sent the information of the illegalities of questioned institute to the Home Minister, Health, Government of Haryana vide letter dated 28.9.2020. In this letter, the Haryana State Pharmacy Council has specifically mentioned that students submitted 10+2 certificate of university of technology and sciences, Raipur chhattisgarh, however, this board /university is not recognized and all these students are resident of Haryana. Therefore, the Haryana State Pharmacy Council requested for action against the board and students because such certificates are affecting the career of genuine students of Haryana State and requested for an inquiry. The copy of the letter dated 28.9.2020 is attached. The Haryana State Pharmacy Council received letter dated 3.10.2020 from the Deputy Secretary of Chhattisgarh Secondary Education Board Raipur. In this letter, the Chhattisgarh Secondary Education Board Raipur has informed that the Board had issued order dated 12.10.2018 pertaining to the questioned institute. The copy of the letter dated 3.10.2020 issued by Deputy Secretary of

Chhattisgarh Secondary Education Board Raipur and order dated 12.10.2018 issued by the Secretary, Chhattisgarh Secondary Education Board Raipur are attached.

From the perusal of the order dated 12.10.2018, it is apparent that the Hon'ble High Court Chhattisgarh had passed one order dated 14.11.2014 in writ petition no.604/2014 and directed the Chhattisgarh Secondary Education Board to conduct an enquiry after issuing show cause notice to the questioned institute. The copy of the High Court order dated 14.11.2014 is attached. Thereafter, the Haryana State Pharmacy Council has also sent one another letter dated 20.10.2020 and again requested the officers of Chhattisgarh Secondary Education Board for grant of information regarding list of students, who passed 10+2 from the period 2012 to 2015 from the questioned institute so that the genuineness of the certificates of the candidates could be ascertained. The Haryana State Pharmacy Council issued one letter dated 17.12.2020 to the Chairman and Secretary of Chhattisgarh Secondary Education Board and requested for grant of list consisting name, father name of students, who passed 10+2 science examination from the questioned institute from 2012 to 2015. The copy of the letter dated 17.12.2020 is attached. However, no list such of the passed students has been received by the Haryana State Pharmacy Council till date. Therefore, the Haryana State Pharmacy Council constrained to issue a letter dated 5.1.2021 to the Chief Secretary Government of Chhattisgarh, Raipur and again requested for the list of students, who passed 10+2 examination from the questioned institute as per the record of Chhattisgarh Secondary Board. The copy of the letter dated 5.1.2021 is attached. However, no information has also received from the office of Chief Secretary Government of Chhattisgarh Raipur till date. Keeping in view the act and conduct on the part of Chhattisgarh Secondary Education Board, the Haryana State Pharmacy Council constrained to submit one representation to the Health and Home Minister Government of Haryana and requested for the enquiry from the vigilance Department Haryana against the questioned institute and its students. The copy of the representation dated 3.2.2021 is attached. On the representation of the Haryana State Pharmacy Council, the Government of Haryana took cognizance and passed order dated 15.3.2021 for enquiry in this matter from the Director General of Police Haryana. Copy of the order dated 15.3.2021 issued by the Government of Haryana, Health Department is attached. Thereafter, the Additional Chief Secretary, Government of Haryana, Home Department issued letter dated 9.4.2021 to the Director

General of Police, Haryana and requested for necessary action. The copy of the letter dated 9.4.2021 is attached. It is relevant to mention here that the Council of Board of School Education in India, New Delhi has also issued letter dated 13.10.2017 regarding the verification of genuineness of the questioned board. In this report/ letter dated 13.10.2017, the Council of Board of the School Education in India stated that this questioned Board does appear in the list of MembersBoards of COBSE. The copy of the letter dated 13.10.2017 is attached. It is also relevant to mention that in the same manner one inquiry was conducted by the CBI in the matter of one another Bogus Board i.e. Board of Secondary Education Madhya Bharat Gwalior and after the enquiry it was found that the said board is bogus and fictitious. In this regard the Chief Secretary of the State of Haryana also issued instructions dated 5.11.2019 and specifically observed that the matter has been considered by the state government and accordingly it is requested to verify the marks sheets and certificates of all the employees and if someone found, who have procured appointment in Haryana State on the basis of mark sheet and certificates of Board of Secondary Education Madhya Bharat Gwalior, his appointment may be cancelled with immediate effect and suitable action as deemed fit may be taken against him. Copy of instruction dated 5.11.2019 is attached. In view of the above stated facts it is apparent that the Board of School and Technical Education, Chhattisgarh is a fictitious and fake board and issuing fake certificates to persons and using these certificates in the state of Haryana for getting Government employment and licenses from the Haryana State Pharmacy Council and other institutes. Thus, investigation be done against the guilty persons, who are behind this fraud and devastating the future of the students.

3. Learned counsel for the petitioner *inter alia* contends that the entire case of the prosecution is based upon the documentary evidence, which is already in possession of the Investigating Agency. The offences in the present FIR as alleged, are triable by Magistrate. Learned counsel further contends that the petitioner is suffering from Pilonidal Sinus, which is a severe problem with pain whereby from the tale bone, the sinus get infected and there is discharge from the same and spinal surgery has already been performed upon the petitioner and keeping in view his serious condition, this Court has granted interim bail to the petitioner for a period of 03 months vide order dated 09.10.2023 passed in CRM-M-4747-2023 and the petitioner has

surrendered before the jail authorities after the expiry of 03 months. 4. Per contra, learned State counsel opposes the prayer of grant of regular bail to the petitioner on the ground that the petitioner is instrumental in spoiling the career of many youngsters. The petitioner is the main accused and the certificate issued by the Society, which is registered as a Board of School and Technical Education, Chhattisgarh, were found lacking in equivalence to enable the recipient of these certificates to procure any government job. Keeping in view the serious allegations levelled against the petitioner and the humongous fraud allegedly committed by the petitioner being Secretary of the Society, he does not deserve the concession of regular bail.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 28.07.2022 and he is not involved in any other case. The investigating agency has already concluded the investigation and filed the final report under Section 173 of Cr.P.C. against the petitioner on 21.10.2022. Trial of the case is likely to take long time to conclude as none out of 54 prosecution witnesses, has been examined so far. Culpability, if any, would be determined at the time of the trial. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other."

6. In view of the ratio of law laid down by Hon'ble Supreme Court in ***Prabhakar Tiwari Vs. State of UP and Anr.*** 2020(1) RCR (Criminal) 831 and ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others*** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

7. Thus, without commenting upon the merits of the case lest it

may prejudice the outcome of the trial, the petition stands allowed and the petitioner- Nitin Lamba is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

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