

Bail matter No. 12226/2021
Vikrant v. State
FIR No. 116/2021 PS Lodhi Colony(Crime Branch)
u/s 3 of Epidemics Diseases Act, 1897, 3/7 of Essential
Commodities Act, 1955, 188/420/120B IPC.

VC hearing conducted today via Cisco Webex app.

Bail Application of the accused Vikrant S/o Sh. Balwan Singh is taken up through VC .

12.05.2021

Present: Sh. Sanjay Kumar Mishra, Ld. APP for State.

Sh. Samudra Sarangi, Abhilasha Khanna and Nishtha Agarwal, Ld. Counsels for Accused.

By this order, I shall dispose of the regular bail application moved on behalf of accused Vikrant u/s 437 Cr.P.C. Reply to the bail application was filed by the IO on 10.05.2021 alongwith an advance copy to Ld. Counsel for Accused.

Arguments on the bail application were thereafter heard on behalf of both the parties on 11.05.2021 and matter was adjourned for orders to 12.05.2021.

It has been submitted by Ld. Senior Counsel for accused that the accused has been falsely implicated in the present case under the charges for alleged commission of offence u/ss 3/7 of the Essential Commodities Act, 1955, Section 3 of the Epidemic Diseases Act, 1897 and Sections 420/188/120B/34 IPC. He submits that although none of the offences alleged by the prosecution is made out against the accused based on averments made in the FIR, however even if, it is

assumed for the sake of arguments that the offence u/ss 188 IPC and Section 3 of the Epidemics Diseases Act are made out, the same areailable.

He submits that the only allegations against the accused in the present case is that of black marketing and hoarding of certain medical equipments such as Oxygen Concentrators, N-95 Masks and thermal scanners in connivance and conspiracy with the other accused persons, however, the accused is merely a paid employee i.e. business Development Executive at Matrix Cellular (International) Services Ltd. (=M/s Matrix) which is engaged in the lawful business of import and sale of the aforesaid equipments so as to make the same available to the needy persons in the present grim situation arising out of COVID-19. In support of his submissions regarding the aforesaid company being a lawful importer and seller of the said devices Ld. Counsel for the accused has relied upon a number of invoices reflecting purchase and sale of the said equipments by the aforesaid company.

He submits that accused is not a beneficiary of the alleged exorbitant profit margins on sale of the said devices. It is further contended by him that there is no order issued by the Govt. for regulation of sale/purchase or price of the said commodities in terms of Section 3 of the Essential Commodities Act and hence there is no question of commission of any offence under Section 7 of the said Act by M/s Matrix Cellular (International) Services Ltd. Or for that matter by the present accused with the help of Section 120-B IPC. Even otherwise, according to him, even if it is assumed for the sake of arguments that the provisions of Drug Price Control Order, 2013 are

applicable to the aforesaid equipments by virtue of S.O. 1232(E) dated 31.03.2020 of National Pharmaceutical Pricing Authority(=NPPA) read with F No. 20(8)/09/2019/Div.III/NPPA dated 29.06.2020 of NPPA(=OM dated 29.06.2020), there is no capping fixed by the government on the price of these equipments and the company being the lawful importer falls within the definition of manufacturer under the Drugs Price Control Order, 2013 (=DPCO 2013) and hence is free to fix it's own MRP.

He submits that the worst case against M/s Matrix can be of violation of OM dated 29.06.2020 regarding non-supply of information regarding the MRP within the given time period of ten days, however, the said order can only said to be falling under Section 3(2)(h) and (i) of the Essential Commodities Act, 1955 (=EC Act) read with Section 20 of the DPCO 2013 and hence is punishable with imprisonment which may extend upto one year as per Section 7(1)(a) (i) of the EC Act. The aforesaid offence thus, according to him, shall be cognizable and bailable in view of part II of First Schedule appended to the Code of Criminal Procedure, 1973(=Cr.P.C.) read with Section 10A of the EC Act(as amended upto date).

So far as the offence under Section 420 IPC is concerned, according to him, there is no reference in the FIR to any complaint from any customer regarding dishonest and fraudulent inducement by the accused to any of it's customers to deliver any property or to do any act which is likely to cause wrongful loss to such person or wrongful gain to the accused which such person would not have done but for such deception. He submits that the aforesaid section has been

added in the FIR dated 05.05.2021 so as to somehow make out a non-bailable offence against the accused so as to enable the police to arrest the accused. He further submits that the IO is trying to improve upon his case by taking clues from the submissions made by Counsels for accused before different Courts/forums while taking recourse to the legal remedies available to the accused and is chasing the customers of M/s Matrix to somehow obtain false complaints against M/s Matrix to ruin its business and goodwill, which is apparent from the fact that a statement regarding overcharging by one Navneet Kalra has allegedly been recorded by the IO much after registration of FIR and arrest of the accused i.e. on 09.05.2021 as per the submissions of the IO. Even otherwise, according to him, the said allegations even as per the case of the IO are against the accused Navneet Kalra, who has nothing to do with M/s Matrix and the present accused, except that he purchased few concentrators from the company Matrix in the name of his firm Dayal Optical.

It is further submitted by him that the arrest of accused is also in violation of guidelines of Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar (2014)8 SCC 273, which have once again been re-iterated by Hon'ble Supreme Court very recently in its order dated 07.05.2021 passed in Re- Contagion of Covid-19 virus in Prisons Suo Motu WP(C) no. 1 of 2020 .

Under the aforesaid circumstances, Ld. Counsel for accused has prayed for grant of regular bail to the accused while further submitting that a) the accused is having clean antecedents and deep roots in the society, b) there is no chance of his fleeing from

justice and c) no custodial interrogation of accused is required considering the fact that all the documents required by the IO have already been provided by M/s Matrix to the IO and the case is solely based on documentary evidence and hence there is no chance of accused tempering with evidence. He further submits that accused is ready to furnish sound surety to the satisfaction of this Court and shall abide by all the conditions which may be imposed by accused at the time of grant of bail including but not limited to joining investigation as and when directed by the IO or the Court, not tempering with the evidence and non-influencing the witnesses.

On the other hand, the bail application of the accused has been strongly opposed by the State through Ld. APP and Addl. PP and by the IO. It has been contended by them that investigation of the case is still at a very nascent stage and the whole conspiracy regarding indulgence of the accused in hoarding and black marketing of essential medical devices alongwith his co-accused needs to be unearthed. It is further submitted by them that accused had a very prominent role in the company M/s Matrix being its Business development head and was arrested from the spot while black-marketing the essential devices. They further submit that documents submitted by the accused are yet to be verified besides investigation into the role of other persons and considering the fact that accused is having links with very influential persons, the possibility of tempering by him with the evidence and influencing the witnesses can't be ruled out.

It is further submitted by Ld. Addl. PP for the State that upon verification of the documents submitted by the accused to the IO,

IO may require further PC remand of the accused which option is available to the IO only during first fifteen days of his arrest and if the accused is granted bail at this stage, the IO will not be able to seek the PC remand of the accused for further investigation.

He further submits that the medical equipments were purportedly imported by M/s Matrix from China and hence the same are likely to be of poor quality which is apparent from the social media posts by some of the customers. He submits that two concentrators have thus been sent by the IO to a Govt. approved testing laboratory and the report from the lab may corroborate the case of prosecution that accused in pursuance to a conspiracy has cheated the public at large and consequentially the govt. by selling poor quality equipments to the customers who were in dire need of the same at an exorbitant price with the profit margin of Rs. 35,000/--45,000/-. He submits that since the accused has failed to comply with the OM dated 29.06.2020, he has committed the offence under Section 3(2)(c) and (d) of the EC Act, which is punishable with imprisonment upto seven years and hence is non-bailable.

In rebuttal, it is submitted by Ld. Counsel for applicant/accused that the terms black-marketing and sale at exorbitant prices are loosely worded and the whole case of the prosecution is based on conjectures and surmises. He submits that the IO as well as Ld. APP for State that are calculating the alleged profit margins on the invoice value of the equipments without taking into consideration the freight/transportation and other office expenses incurred by M/s Matrix including the expenses on salaries paid by the company to it's

employees. He has pointed out that similar oxygen concentrators are being offered for sale at India Mart and other e-commerce platforms at prices as high as Rs. 1,00,000/- to Rs. 1,25,000/- and hence by no stretch of imagination the price of Rs. 45,000/- to Rs. 69,999/- can be said to be exorbitant.

In fact, according to him, in an open and unregulated market the price of the product is decided by the market forces and if the company M/s Matrix quotes an exorbitant price for the product, it would not have been able to sell the products. In any case, according to him, the Govt. has not capped the price of the concentrators or the other equipments and hence the accused can't be booked for the offence under Section 3/7 of the Essential Commodities Act particularly when there is not even an iota of evidence available with the IO to suggest that the company had sold the concentrators above the MRP mentioned on the label affixed on the Package containing the concentrators and in few cases the payment of upto Rs. 1500/- was received by the company from the customers over and above the MRP towards the delivery charges. It is further submitted by him that the concentrators were imported by the company not only from China but also from Europe and in case any customer is not satisfied with the performance of any of the concentrators, he upon instructions from M/s Matrix undertakes to take the same back and refund the price.

I have heard the submissions made on behalf of the parties and have carefully perused the material available on record including the additional documents i.e. the copy of writ petition preferred by M/s Matrix before Hon'ble High Court of Delhi

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alongwith its annexures and the case diary upto 10.05.2021 submitted by the IO through e-mail on the e-mail id of the undersigned in the form of two PDF files, one photograph of the cartons containing few of the oxygen concentrators seized by the IO displaying the MRP Label and the screenshots of the booking slips and invoices handed over by the customers to the guard of M/s Matrix at the time of taking the delivery of the concentrators.

Although the Court should not delve too deeply into the merits of the case at the time of adjudication of an application for grant of bail particularly when the investigation of the case is still at an initial stage, however, since very pertinent questions have been raised by Ld. Senior Counsel for the accused during the course of arguments regarding the applicability of provisions of the Essential Commodities Act, 1955(as amended upto date) and other provisions of law to the facts and circumstances of the present case, even if the worst case scenario is assumed against the accused as per the allegations levelled by the prosecution, the Court has thought it appropriate to deal with the said issues even at the stage of adjudication of the bail application. *However, for removal of doubts, it is clarified that the observations made hereinunder shall not have a bearing on the merits of the case and are not meant to scuttle/interfere with the ongoing investigation but only for the purpose of effectively adjudicating the present bail application.*

A bare perusal of the FIR in the present case reflects that the same has been registered for the offence under Sections 3 of the Epidemic Diseases Act, 1897(=ED Act), Section 3 read with Section 7

of the Essential Commodities Act, 1955 (=EC Act) and Sections 188/420/120B of the Indian Penal Code (=IPC). The relevant facts as per the FIR are that on 05.05.2021, SHO PS Lodhi Colony alongwith his driver was on patrolling duty for implementation of the lockdown and at about 06.30 PM when he reached at Central Park, Main Market, Lodhi Colony he saw two three vehicles in front of Nege & Ju Restaurant and finding the said restaurant open despite lockdown, entered inside the same for checking. Upon checking, he found several cartons containing as many as 32 oxygen concentrators of different descriptions, 5 professional thermal imagers and around 1000 KN-95 Masks. Four of the accused namely Gaurav Suri, Hitesh Kumar, Vikrant and Satish Sethi were found present inside the restaurant and upon asking they could not produce any documents regarding the same and since they confirmed that the said equipments/devices were not required by them for medical needs of their near relatives and they were merely hoarding the said devices in the restaurant with an intent to black market the same at exorbitant prices.

As per FIR, SHO has found another person namely Ayush Agarwal on the spot who upon enquiry informed the SHO that he had knowledge about the said place and after having purchased an oxygen concentrator through X-Factor App for a price of Rs. 70,000/- approx. had visited the restaurant to take the delivery. He was discharged without recording his statement due to lack of time. Upon further enquiry accused Gaurav Suri claimed himself to be the business head of M/s Matrix and remaining three accused to be the employees of the company. He also disclosed the name of Navneet Kalra as the

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restaurant owner with whose consent according to him the restaurant was being used for black marketing i.e for selling the said material at an exorbitant price after purchasing the same at a very low cost. On the basis of said enquiry, SHO concluded that prima facie offence under Section 3 of the ED Act, Section 3 read with Section 7 of the EC Act and Sections 188/420/120B of the IPC were made out. The SHO has accordingly got the present FIR registered, seized the oxygen concentrators, KN-95 masks and thermal imaging devices and arrested all the four accused found on the spot. Subsequently at the instance of accused total 524 Oxygen concentrators were recovered by the IO from different locations.

On a perusal of the aforesaid FIR, it is apparent that even if all the averments in the FIR are presumed to be gospel truth, still no *prima facie* case under section 420 IPC is made out against the accused at least from the contents of the FIR. In his reply to the bail application, it has been submitted by the IO that there is a statement of one such aggrieved person to whom the co-accused Navneet Kalra first quoted the price of oxygen concentrator as Rs. 49999/- and the next day forced him to pay Rs. 55,000/- due to his urgent requirement and two of the persons have bought the concentrators from co-accused Navneet Kalra and found the performance of the same much below the advertised level and demanded the refund or replacement, which was refused by him for want of any policy for refund or replacement.

Upon pointing out of the IO, statement of only one such person has been found to be mentioned in the case diary which has been received by the IO from the said person through e-mail only on

09.05.2021. There is no mention in the entire case diary about any social media post or any other aggrieved person coming forward with the complaint against the accused at least in the case diaries till 10.05.2021 which have been received by the Court on its e-mail id for perusal without any advance copy of the same to the accused.

I have gone through the said statement and even as per the said statement, in my considered opinion, at the best a case of breach of contract is made out and no *prima facie* case for cheating u/s 420 IPC is made out against the accused more so when the allegations are specifically against co-accused Navneet kalra and not against the present accused. This Court is refraining from reproduction of the statement of the aforesaid customer in its order from the case diary in view of submissions of Ld. Addl PP for the state that though this Court has the power to peruse the case diary to satisfy itself about the existence of prima facie case against the accused, however, the same should neither be shared with the accused and no detailed reproduction of the same should be made in the order by this Court in view of pronouncement of Hon'ble Supreme Court in ***Director, CBI & Ors. v. Niyamvedi (1995)3 SCC 601.***

It is significant to note that IO has alleged the existence of criminal conspiracy between all the accused including the co-accused Navneet Kalra, however, there is nothing on record to suggest that the said co-accused had any concern with M/s Matrix except that M/s Dayal Oticals allegedly owned by Accused Navneet Kalra had purchased around 250 oxygen concentrators from M/s Matrix and he was separately selling the same by advertising through private

whatsapp groups/facebook account and twitter account to his friends and other known persons and delivery was being made from two restaurants i.e. Town Hall Restaurant and Khan Chacha Restaurant, which are allegedly being run by some hospitality company in which accused Navneet kalra is stated to be having a substantial stake.

It has also been clarified by Counsel for accused Hitesh in the connected matter that even in the restaurant Nege & Ju the co-accused Navneet Kalra is having a substantial stake and since the said restaurant was closed due to lockdown, the co-accused Navneet had acceded to the request of CEO of M/s Matrix for providing a place for delivery of concentrators sold by matrix through X-factor App and in fact according to him, even the co-accused Hitesh who is the manager of Town Hall Restaurant had visited the Nege & Ju Restarant for delivery of food to the employees of M/s Matrix which can be verified from the fact that utensils are still lying in the car of accused Hitesh which has been seized by the IO.

Without going into the merits of the said pleas, since it has already been observed by this Court hereinabove that even from the statement of the alleged aggrieved no prima facie case u/s 420 IPC is made out and the alleged social media posts and the plea of IO regarding two more persons being not satisfied with performance of the concentrators do not find mention in any of the case diaries produced by the IO before this Court, at this stage there is no prima facie case made out against the present accused for the offence u/s 120B read with Section 420 IPC. It has been submitted by the IO that more victims may come forward with the complaints against the

accused and investigation is still going on.

It is therefore once again clarified that the IO is free to continue the investigation on the aforesaid aspects without being influenced by the aforesaid observations which only records the opinion of this court at this stage based on the material collected by the IO and produced before the court in the form of case diaries. However, it is expected from the IO that he shall carry out the investigation in an efficient manner without fear or favour in his quest for the truth. Nothing stops the IO from adding more charges in the present case as and when some evidence regarding the same comes before him during investigation and to take all steps as per law including arrest, seeking remand, search and seizure so as to bring the investigation to a logical conclusion, while keeping in mind the guidelines laid down by Hon'ble Supreme Court and Hon'ble High Court of Delhi on the aforesaid aspects. However, it can't be appreciated that an FIR is registered first incorporating the non-bailable offences such as Section 420 IPC and accused are arrested without even a *prima facie* case u/s 420 IPC even as per averments made in the tehrir and thereafter the efforts are being made to collect evidence to support the said charge. I want to say no more at this stage except emphasizing once again that it is duty of the IO under the law to investigate the case dispassionately in transparent and efficient manner.

Now coming to the issue of applicability of provisions of Section 3/7 of the EC Act to the facts of the present case. It is significant to note in this regard that as per IO, Hon'ble Delhi High

Court in its order dated 02.05.2021 passed in WP© 4984/2021 has directed the state to ensure that none of the equipments or medicines used in the treatment of COVID-19 disease are sold at the prices above the MRP and any person found indulging in the malpractice of either hoarding the equipments or medicines, or selling the same at prices above MRP shall be booked and brought to the notice of this court for initiation of independent contempt action against all such persons.

Moreover, according to him, during investigation he has looked into some of the relevant notifications on the point whether or not the oxygen concentrators are essential commodities. Similar submissions were made by the IO on 10.05.2021, when the bail applications of the accused were mentioned before the Court. Before advertng to the notifications relied upon by the state, this court would like to lay emphasis on the words used by the IO that he had looked for the notifications during investigation, meaning thereby that the Section 3/7 of the EC Act was invoked in the FIR without the IO being sure about existence of any such notification. Once again, such an approach on the part of police to book a person first and to look for the law later on, can't at all be appreciated particularly when it amounts to curtailment of fundamental right of liberty of a citizen. I refrain from making further observations in this regard.

The IO has further relied upon SO No. 648(E) dated 11.02.2020 in terms of Section 3(b)(iv) of the Drugs and Cosmetics Act, 1940 (=D&C Act) read with SO No. 1232(E) dated 31.03.2020 of the NPPA and order No. F.52/DC.HOO/2020/199 dated 07.05.2021 of

the Drugs Control Department of Govt. Of NCT of Delhi to contend that by virtue of the said notifications all medical devices including the oxygen concentrators have been notified as drugs within the meaning of Section 3 (b)(iv) of the D&C Act and within the meaning of DPCO, 2013 and hence violation of the same invites an action under Section 3/7 of the EC Act.

So far as the N-95 masks are concerned, it is only today in the morning when the order was fixed for orders that IO has come out with the SO No. 1087(E) dated 13.03.2020 of the Department of Consumer affairs, GOI and F.12(37)/2020/DP/NPPA/Div. II dated 13.03.2020 of NPPA to claim that since a large number of masks have been recovered from the possession of/at the instance of accused, *prima facie* case under Section 3/7 of the EC Act is made out against the accused.

On the other hand, as has already been noted hereinabove, as per counsel for accused, the provisions of Section 3/7 of the EC Act are not applicable in the present case for want of notification for regulation of price of the oxygen concentrators and even if it is assumed for the sake of arguments that the EC Act is attracted to the present case, at the best a case under section 3(2)(h) and (i) of the EC Act can be said to have been made out, which is punishable with imprisonment which may extend upto one year and hence is bailable.

Section 2A of the EC Act defines an essential commodity for the purposes of the aforesaid Act so as to mean a commodity specified in the schedule appended to the EC Act which can be amended by the Central Govt. as per the procedure given in the said

Section. A bare perusal of the Schedule appended to EC Act shows that “Drugs” find mention at Sr. No. 1 in the Schedule, meaning thereby that all drugs have been declared essential commodities for the purposes of the EC Act. As per explanation to the said entry, the Drugs for the purposes of said schedule shall have the same meaning which has been assigned to it in Section 3(b) of the Drugs and Cosmetics Act.

As per Section 3(b)(iv) of the D&C Act, medical devices as may be notified by the appropriate Govt. from time to time shall also fall within the definition of drugs. Now vide notification no. SO 648(E) dated 11.02.2020 of Ministry of Health and Family Welfare, all medical devices have been notified as drugs within the meaning of Section 3(b)(iv) of the D&C Act and hence the same shall automatically fall within the purview of the Essential Commodities Act.

Now Section 3 of the EC Act, empowers the Central Govt. to issue an order regulating or prohibiting the production, supply and distribution of the Essential Commodities including the trade and commerce therein so as to maintain or increase supplies of any essential commodities or for securing their equal distribution and availability at fair prices. Section 3(2) of the EC Act specifies some of the matters which such an order may cover without prejudice to the generality of the powers conferred under Section 3(1) of the Act. Now, so far as drugs are concerned, Central Govt. has promulgated an order within the meaning of Section 3(1) of the EC Act viz. Drug Price Control Order, 2013 (=DPCO) which deals with the several subjects

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under Section 3(2)(a) to (j) of the EC Act. By virtue of notification no. SO 1232(E) dated 31.03.2020 of the NPPA, all medical devices are notified to be governed by the DPCO.

However, admittedly no notification for capping the MRP of the oxygen concentrators has been issued by the NPPA to whom the powers of Central Govt. under para 3 of DPCO read with Section 3 of the EC Act have been delegated by virtue of notification no. 1249(E) dated 06.04.2020 of Ministry of Chemical & Fertilizers.

Since the oxygen concentrator has not been incorporated in the schedule appended to DPCO, the relevant para of the DPCO, which shall be applicable to oxygen concentrators, is para 20 which talks about monitoring of MRP of all drugs meaning thereby that there is a restriction upon the manufacturer(which includes importer as per para 2(n) of DPCO, 2013) not to increase the MRP more than 10% in a period of 12 months and it is for the said purpose that a notification vide OM No. F. 20(8)/09/2019/Div.III/NPPA dated 29.06.2020 has been issued by NPPA requiring the manufacturer/importers of oxygen concentrators to provide requisite information about MRP within 10 days in pursuance to para 29 of the DPCO, which direction had allegedly not been complied with by the accused.

It is significant to note that para 29 of DPCO, 2013 covers the subject matter in terms of Section 3(2)(h) and (i) of the EC Act and hence in terms of Section 7(1)(a)(i) of the EC Act the said violation shall be punishable with an imprisonment which may extend upto one year and hence shall be bailable. I do not find any force in the submission of Ld. Addl. PP for the State regarding the said violation

being governed by Section 3(2)(c) and (d) of the EC Act and hence punishable with imprisonment upto 7 years in the absence of any notification for capping the price of oxygen concentrators and other devices which was done by the Central Govt. in case of N-95 masks and sanitizers upto 30.06.2020 vide notification SO No. 1087(E) dated 13.03.2020 of the Department of Consumer affairs, GOI and n 12(37)/2020/DP/NPPA/Div. II dated 13.03.2020 of NPPA and the same was allowed to be lapsed and not renewed after 30.06.2020.

So far as an order by Drugs and Control Department of Govt. of NCT of Delhi dated 07.05.2021 is concerned the same does not say anything more than what is stated in para 26 of the DPCO that no person shall sell the medical devices on a price more than MRP. Even otherwise, the said order can't have a retrospective effect so as to hold the accused guilty of the offence allegedly committed prior to 05.05.2021. There is no material collected by the IO till date that the accused were found selling the concentrators at a price more than MRP which as per label, admittedly affixed on all the boxes containing concentrators, is Rs. 69999/-. Upon enquiry, IO had pointed out some screen shots reflecting the payment of Rs. 700/- to Rs. 1500/- over and above the MRP only in case of three customers, which as per the accused and as per some of the invoices relied upon by him, were on account of delivery charges.

Thus, as on date, there is nothing to suggest violation of para 26 of the DPCO by the accused bringing the case under Section 3(2)(c) of the EC Act. So far as applicability of para 3(2)(d) of the EC Act is concerned, the word "otherwise" therein should be construed

ejusdem generis with the preceding words regulation by “licences” and “permits”. As per GSR 102(E) dated 11.02.2020, the non-scheduled medical devices are still under the voluntary registration/licence regime and it is not mandatory for the accused to obtain a licence or registration for manufacturing/import/sale of the oxygen concentrators at least as on date.

For want of any capping on the MRP, manufacturer/importer are free to fix any MRP for the said devices subject of course to the cap of not more than 10% increase in MRP every year in terms of para 20 of DPCO.

Despite repeated directions by Hon’ble High Court of Delhi, the govt. is not coming forward to cap the price of essential medical devices. Nor any regulation has been made by the govt. for sale of the same by the importers to the Govt. for its equitable distribution to the needy persons for reasons best known to the Govt. Mere booking of the manufacturers/importers under the criminal law without a regulatory regime in place and without any evidence just to show that the state is concerned about the problems of citizens in procurement of life saving medical devices, in my considered opinion, will be counter-productive and shall create a further scarcity of already scarce medical devices as it will discourage the manufacturers and importers from pushing their resources so as to make the essential medical devices available to the needy citizens. The aforesaid observations of the court should not be construed that this court has any sympathy with the black marketers and hoarders of the essential medicines/medical devices, however, the vacuum in the law needs to

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be filled up by the legislature or for that matter by the executive by issuing appropriate regulations in pursuance to the powers delegated by the legislation to the executive. The Court is also unable to comprehend as to why the provisions of Prevention of Black Marketing and Maintenance of Supplies of the Essential Commodities Act, 1980 are not being invoked by the State if the state wants to stop the black-marketing.

It may be noted that the gravamen of the case of prosecution is the alleged black marketing and hoarding of concentrators by the accused, however, the aforesaid terms are not defined in any of the Acts under consideration before this Court. The only relevant provisions which seems to regulate the black-marketing and hoarding (as per the meaning of the said terms in common parlance) in case of non scheduled drugs (which presently includes medical devices) in the DPCO seems to be para 20, 25, 26 and 28. Out of these para 20, 25 and 26 seems to take care of the black-marketing of the non-scheduled drugs such as oxygen concentrators and Masks and para 28 seems to have taken care of hoarding.

However, as has been observed hereinabove, no evidence seems to have been collected by the IO qua the said violations till date. So far as para 28 of DPCA is concerned, admittedly M/s Matrix had been selling the concentrators through X factor App which is reported to be available on play store and mac since the year 2016.

Thus, in view of the aforesaid discussions, in my considered opinion, the accused is entitled to bail at this stage more so when admittedly as per the IO all the documents required by the IO

from the accused at this stage have been supplied to the IO which are being verified by the IO and accused is admittedly having clean antecedents. The apprehension of the state that the accused may try to influence the witnesses and temper with the evidence can be allayed by imposing suitable conditions upon the accused. Similarly by directing the accused to join investigation, the plea of the state regarding investigation being at an initial stage and chances of the accused hampering the investigation can be taken care of. Merely because the IO can apply for PC remand of the accused during first fifteen days can also not be the ground to deny bail to the accused.

Thus, the accused is hereby admitted to bail on furnishing of PB and SB in sum of Rs. 50,000/- each to the satisfaction of Ld. Duty MM (SE) with the condition that the accused shall not directly or indirectly try to influence the witnesses, shall not in any manner temper with the evidence and shall join the investigation as and when directed by the IO. Bail Bonds not furnished.

Bail application of accused is thus disposed off.

Copy of this order be sent to Ld. Counsel for Applicant, IO as well as Ld. APP for State through e-mail forthwith. Copy of order be also sent to Superintendent Jail concerned through e-mail and jail dak. The same be also uploaded on CIS server as well as the District Court website.

(Arun Kumar Garg)
Chief Metropolitan Magistrate
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