
(2019) 03 UK CK 0041

In the Uttarakhand High Court

Case No : First Bail Application No. 2330 Of 2018

Maresh Kumar Saini

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 274, 275, 276, 419, 420, 467, 468
Drug And Cosmetics Act, 1940 — Section 17, 17B, 18
Copyright Act, 1957 — Section 63

Citation : (2019) 03 UK CK 0041

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Pushpa Joshi, Gaurav Singh, S.K. Chaudhary

Final Decision : Dismissed

Judgement

Ravindra Maithani, J

1. Heard learned counsel for the parties and perused the records.
2. Applicant - Mahesh Kumar Saini is in custody in Case Crime No. 366 of 2018 under Sections 274, 275, 276, 419, 420, 467 and 468 I.P.C. and 17/18 of Drug and Cosmetics Act, 1940 and 63 Copyright Act, 1957 and 103/104 Trades Mark Acts, 1999, registered at Police Station - Kotwali, Roorkee, District Haridwar.
3. According to F.I.R., Drug Inspector, Haridwar had information that the applicant is in the trade of spurious drugs. He conveyed it to the Drug Controller of Uttarakhand, who in turn constituted a joint team of the first informant i.e. Drug Inspector, Haridwar and Drug Inspector, Pauri Garhwal. Pursuant to the directions, a team so constituted, took one person along with them as dummy customer. The dummy customer telephoned the first informant about the drugs. The applicant replied that their business is almost closed, only Onerex Syrup may be given. The dummy customer settled the deal of 500 bottles @ Rs. 20 per bottle. The dummy customer along with the first informant and another witness

reached at the indicated place, where the applicant reached in his scooty and took the money from the dummy customer, Swatantra Pal. Soon thereafter, a vehicle reached there. The person sitting on the back seat of the car opened the dicky and gave four boxes to the dummy customer. As soon as it was done, the first informant and his colleague appeared and arrested them. In the car, there were two persons namely Vipin Kumar and Javed Ahmad. The boxes given to the dummy customer were Onerex Syrups. Mandatory forms were filled and sample was taken. From the dicky of the scooty of the applicant, some other medicines were recovered, which were also sealed. Arrested person Vipin Kumar was involved in an other cases pertaining to drugs. When he was questioned, at the spot, at his instance a raid was conducted in Mohammadpur, Roorkee and 11 boxes of Onerex Syrup were found from the house of a Ali Hasan, which was taken on rent by the Vipin Kumar. A recovery memo was prepared and the forms were filled and the first informant lodged the report at Police Station on 21.09.2018 at 2:16 a.m.

4. Learned counsel for the applicant would argue that offence under Trade Marks Act is not made out because manufacturer has not been made a party. It is argued that the drugs allegedly recovered cannot be said to be spurious, under Section 17-B of the Drugs and Cosmetics Act, 1940 because the real manufacturer is not before the Court. It is argued that at the most it may be a case of misbranded drug. It is also argued that nothing was found from the possession of the applicant. Learned counsel for the applicant has also made reference to the report of the Forensic Science Laboratory and argued that the drug is not injurious to health, therefore, it is urged that it is a case fit for bail.

5. On the other hand, learned Deputy Advocate General for the State would argue that the applicant has been under the trade of spurious drugs in Roorkee and the trap having been made, he was arrested with the spurious drugs, which has been confirmed by the report of Forensic Science Laboratory.

6. According to the prosecution case, the applicant has been in the trade of spurious drugs. He was contacted by an independent customer Swatantra Pal. This witness has categorically stated about the trap. According to him, the applicant was contacted by him; he had sent WhatsApp messages to the applicant to settle the deal. And once deal was settled, he paid Rs.10,000/- to the first informant and thereafter a car came and he was given Onerex Syrup. This witness has also stated as to what happened thereafter i.e. the recovery of 11 more boxes of Onerex Syrup at the instance of co-accused Vipin Kumar. Drug Inspector also supported the action taken by him while arresting the applicant and recovery of spurious drugs. The samples taken from the recovered drug was sent for Forensic Science Laboratory. According to it's report, the drug is spurious. At this stage, much need not be discussed. Sale of spurious drugs is definitely an offence which is not only economic, but it is also a health related issue.

7. Considering all the facts and circumstances of the case, this Court is of the

opinion that at this stage, the applicant is not entitled to be enlarged on bail. The instant bail application deserves to be rejected.

8. The first bail application is accordingly rejected.