

(2005) 08 AHC CK 0108
In the Allahabad High Court

Case No : Criminal Miscellaneous Bail Application No. 13811 of 2005

Maresh Rastogi (In Jail)

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Copyright Act, 1957 — Section 55, 63
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2005) 08 AHC CK 0108

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Viresh Mishra, O.P. Singh and Rudra Pratap Singh, for the Appellant; G.S. Chaturvedi, Samit Gopal, Diptiman Singh and Bharti Sapru and A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—Heard Sri Viresh Mishra, Senior Advocate assisted by Sri OP. Singh learned counsel for the applicant and learned A.G.A. and Sri G.S. Chaturvedi, Senior Advocate assisted by Miss Bharti Sapru, Samit Gopal and Sri Diptiman Singh learned counsel for the complainant.

2. This application is filed by the applicant Maresh Rastogi with a prayer that the applicant may be released on bail in case Crime no. 214 of 2005, P.S. 58 Noida, District Gautam Buddha Nagar under Sections 420, 468 and 471 I.P.C. read with Section 63 of the Copy Right Act.

3. The prosecution story, in brief, is that the applicant is owner of Galore Prints Industries Limited. It is established in Sector- 58, A Block, Plot No. 46 Noida. The F.I.R. has been lodged against him by Sri Ashwani Tyagi, Law Officer of Hindustan Liver Limited Co. On 23.6.2005 at 11.30 a.m. At the police station concerned as mentioned above.

4. It is contended that the first informant received an information through reliable sources that from M/s Galore Prints Industries Ltd., whose owner is the

present applicant, duplicate packaging having trademark and copy right of the company is being printed. The packaging is printed in the name and style of SUNSLILK, CLINIC, ALL CLEAR AND CLINIC PLUS and the same is being sold in the marked by selling such duplicate material, the goodwill of the company is being lowered down and the fraud is being played with the public at large and the Government also. In the F.I.R. it was mentioned that the printing machine and other material may be seized and proper investigation may be done.

5. After lodging the F.I.R. one S.I. Sri K.C. Sharma along with some police personnel came at the place of occurrence and saw the machines where they found that one roll of clinic plus was on the machine which was in the process of cutting. It was disclosed that the duplicate pouches were being prepared. The supervisor of the company disclosed that the alleged wrapper was printed for the company Hindustan Liver Limited or it was printed by the order of the some other company, but the owner of the factory could not show any order or document, for printing the same, then the printed roll of clinic plus and the machines were seized. It is further contended that on inquiry the name and address of the owner of factory was also disclosed. On inquiry he disclosed the name of Supervisor , Foreman and other workers who were doing the work on that machines. It is alleged that it was confessed by the applicant that the printing work was done at his factory and thereafter, it is sold in the market. It is contended that two bundles of printed articles were taken out from the machines. Its weight was 125 kg on which CLINIC PLUS HEALTH SHAMPOO WITH PROTIENE RS 1/- was printed in English and on the back of that pouch MADE IN INDIA manufactured by HINDUSTAN LIVER LIMITED was printed. It is contended that the printed material was identified as duplicate by the first informant for which company has not authorized the applicant for printing the same. It is contended that charge was disclosed to the applicant and he was arrested on 23.6.2005 at 1.30 p.m. and the factory was sealed. It is contended by the learned counsel for the applicant that:-

1. The applicant is Managing Director of M/s Galore Prints Industries Limited, Noida. It is registered company under the Company Act. Its aim and object is to manufacture of packaging products of plastic except house hold. It was established in 1989 since then the company is doing the job of printing of pouches on the order of company.

2. The applicant was printing the alleged recorded material on the basis of the order given by the Officer of Hindustan Liver Limited. He clearly stated before the I.O. That he received the order of printing on the telephonic message given by the Officer of the Company Sri V. Narsimha Swami from Hyderabad. Its message was given to him by the cellphone No. 9848031643 and the printing work was not duplicate. It was done on the order of the officer of the company. The statement of the applicant was recorded by the I.O. , but no where it has come in the evidence that above officer Mr. V. Narsimha Swami had contradicted the statement of the applicant and no evidence has come that the cellphone no.

9848031643 was not used for above mentioned conversation.

3. It is further contended that M/s Galore Prints Industries Ltd, Is a public Ltd Co. Where the profit and liabilities were limited according to share and in average the company pays a sum of Rs. 40,00,000/- per annum as a trade tax to the Government. The Company and its director paid all the necessary taxes, duties and excise duties, Income Tax, Trade Tax in accordance with the provisions of law. The local police under the influence of the first informant closed the factory of the applicant and the applicant was arrested.

4. That there is no evidence to show that the applicant was selling the printed material in the open market. It has been mentioned in the F.I.R. by showing that the same has been confessed by the applicant so that the gravity of the offence may be increased, because it has not been confessed by the applicant and it is not admissible in the eye of law also.

5. That on the basis of the allegation made in the F.I.R. no offence u/s 420, 468, 471 IPC. and Section 63 of the Copy Right Act is made out, because the applicant was permitted to print the alleged* material on the basis of order given by the company itself.

6. That the punishment provided by the Section 63 of the Copy Right Act 1957 is with imprisonment for the terms which shall not be less than six months, but which may extend to three years and with fine which was not be less than Rs. 50,000/-, but which may extend to two lac rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees. The applicant is in jail since 23.6.2005.

7. That the Copy Right Act itself has provided the civil remedies for infringement of Copy Right Act u/s 55 of the Act. In such circumstances it is not necessary requirement to keep the applicant in jail.

8. That the alleged offence is triable by Judicial Magistrate, 1st Class or Metropolitan Magistrate, but in this Act nowhere it has been provided that it is non bailable.

9. That the applicant is Managing Director of the company. He is having a good reputation. There is no chance of absconding or tampering with the evidence,

It is opposed by the learned A.G.A. and learned Counsel for the complainant by submitting that the applicant was arrested and duplicate material was recovered from his company and the same was printed without any authority of the company because the applicant could not show any such document. The duplicate printing was done by the company of the applicant for the purpose of selling the same in the market. It is submitted that on the basis of the allegation made against the applicant the offence u/s 420 and 467 and 471 I.P.C. and Section 63

of the Copy Right Act is made out. But it is not admitted that in this act nowhere it has been mentioned that the alleged offence is bailable or non bailable. But according to scheduled 1 of the Cr. P.C. if any offence other than the I.P.C. for which the punishment is imprisonment for three years or upward, but not more than 7 years, the offence will be cognizable and non bailable.

6. It is further contended that the applicant himself has admitted in the statement recorded by I.O. that he has printed the same on the basis of the order given by the officer of the company. Therefore the applicant has confessed the commission of the offence. So, he not entitled for bail.

7. In view of the facts and circumstances of the case and submissions made by the learned counsel for the applicant, learned A.G.A. and learned counsel for the complainant, I am of the view that it is not a proper stage to record any finding on the legal points as raised by the parties. The same shall be considered at the stage of the trial, when the evidence will be adduced, but considering all the facts and circumstances of the case and gravity of the offence the applicant is entitled for bail.

8. Let the applicant Mahesh Rastogi involved in case crime no. 214 of 2005, u/s 420, 468, 471 I.P.C. read with Section 63 of the Copy Right Act; P.S. Sector 58, Noida, District Gautam Budh Nagar be enlarged on bail on his furnishing personal and two sureties each of the like amount to the satisfaction of the court concerned.