

(2016) 06 SHI CK 0028

In the High Court Of Himachal Pradesh

Case No : Cr. M.P. (M) Nos. 617 & 618 of 2016

Maman Chand Jain

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Drugs and Cosmetics Act, 1940 — Section 17B, 18(a)(i), 27(c), 36AC
Penal Code, 1860 (IPC) — Section 420

Citation : (2016) ALLMRCri 578 : (2016) 3 HimLR 1809 : (2016) ILRHP 1599

Hon'ble Judges : Mr. Dharam Chand Chaudhary, J.

Bench : Single Bench

Advocate : Mr. K.D. Shreedhar, Senior Advocate, with Mr. Sameer Thakur, Advocate, for the Petitioners; Mr. D.S. Nainta and Mr. Virender Verma, Additional Advocates General. SI/SHO Yoginder Singh, Police Station, Kala Amba is also present, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Dharam Chand Chaudhary, J.(Oral)—This order shall dispose of both the petitions filed for grant of anticipatory bail. The petitioners are accused in a case registered against them under Section 27(c) read with Sections 18(a)(i), 17B, 36AC of the Drugs and Cosmetics Act and Section 420 of the Indian Penal Code, vide FIR No. 22/16, in Police Station, Kala Amb, District Sirmaur.

2. Accused-petitioner Minakshi Jain is the owner of M/s. Vardhman Pharma, Plot No. 32, Industrial Area, Kala Amb. Accused-petitioner Maman Chand Jain is her husband and allegedly general power of attorney. Previously FIR No. 70/13 was lodged in Police Station, Kala Amb on 29.9.2013 against both of them for the commission of the similar offence. The premises of M/s. Vardhman Pharma were sealed during the course of investigation in that case. The same, on an application filed by the accused-petitioner, was ordered to be resealed by learned Sessions Judge, Sirmaur District at Nahan and its possession handed over to accused-petitioner Minakshi Jain vide order dated 19.1.2015 subject to her

furnishing personal bond undertaking therein that no manufacturing activities shall be carried out without any authorisation from the State Drugs Controller and seeking permission of the Court. However, a monthly alert issued by the CDSCO in the month of January, 2016 received from Central Drugs Department, it transpired that samples of drugs manufactured by M/s. Vardhman Pharma were found spurious. Since the premises of M/s. Vardhman Pharma was handed over to accused-petitioner Minakshi Jain subject to the condition that no manufacturing activities shall be carried out therein and as per the alert issued by the CDSCO in the month of March, 2015 the Company, M/s. Vardhman Pharma was not having any valid license by the Drugs Controller Himachal Pradesh, therefore, was not authorised to indulge in any kind of manufacturing activities. The factum of its drugs sample failed as per the alert issued by the CDSCO in the month of January, 2016, has resulted in suspicion that the said firm irrespective of the order suspending manufacturing activities passed by learned Sessions judge Sirmaur at Nahan is still manufacturing spurious drugs without any authorization. Therefore, the complainant-Assistant Drugs Controller, Nahan has secretly observed the activities going on inside the factory premises. When he was satisfied that some manufacturing activities are going on in the factory premises, he informed the State Drugs Controller accordingly. Consequently, a team was formed and the factory premises of the firm were raided on 12.3.2016 around 8.00 p.m. with the assistance of local police in the presence of independent witnesses. At the time of raid, two persons were present inside the factory premises. They allegedly used to punch and pack the medicines at the behest of the accused-petitioners. During the checking of the factory premises, some drugs were found to be manufactured and some were in the process of being manufactured in the name of M/s. Sai Bliss Drugs and Pharmaceuticals, 6-67 Gondpur, Industrial Area, Paonta Sahib, District Sirmaur. Certain labels of drugs "Bihar Government Supply" were also seized. Labels of "M/s. Aims International" Dehradun Road, Paonta, were also found in the factory premises and seized. Therefore, case vide FIR No. 22/16 came to be registered against both the accused-petitioners.

3. The investigation conducted at this stage reveals that the drugs seized from the factory premises of the firm on analysis were found spurious. A similar case was registered against the accused-petitioners in Police Station, Kala Amb vide FIR No. 70/13, as recorded in the order passed on the previous date. Challan filed in that case is pending consideration in the Court. One FIR bearing No. 70/16 has been registered in Police Station, Ambala (Haryana) on 14.3.2016 for the commission of the similar offence against Aniket Jain, the son of the accused-petitioners. Although, learned Counsel on instructions submits that the said FIR stands cancelled yesterday on 31.5.2016, yet the fact remains that their son is also involved in the commission of similar offence. It is, therefore, a case where the accused-petitioners instead of having title repentance to the offence they committed previously are again involved in the commission of a similar offence. They are, therefore, seem to be habitual offenders.

4. It is significant to note that irrespective of factory premises of the firm was handed over on Supurdari to the accused-petitioner subject to the condition that no manufacturing activities shall be carried out without seeking permission of the Court. As per the evidence collected at this stage, both the accused have been found to have manufactured the drugs unauthorisedly and without seeking permission of learned Sessions Judge, Sirmaur District at Nahan. Not only this, but the drugs seized from the factory premises, which on analysis have been found to be spurious, were being supplied to Government Institutions in Arunachal Pradesh, Mizoram, Tripura, Uttar Pradesh and Chhatisgarh etc. Some labels with a note "supply of Government of Bihar" were also seized from the factory premises.

5. The police is required to investigate each and every aspect of the matter in order to find out the truth. The investigation conducted at this stage is not sufficient and as such the present is a fit case where custodial interrogation of both the accused-petitioners is required because as per the allegations that they are manufacturing the spurious drugs and the offence they committed is not only against an individual, but against the public at large, the present is not a case where the discretion in the matter of grant of bail should be exercised in favour of the accused-petitioners. Since they are involved in the commission of an offence not only serious but heinous also and as in the given facts and circumstances their custodial interrogation is required, therefore, they are not entitled to be enlarged on bail. Both the petitions being devoid of any merits are accordingly dismissed.