

(2010) 05 RAJ CK 0017

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 990 of 2010

Navneet Sharma

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Copyright Act, 1957 — Section 63, 65
Criminal Procedure Code, 1973 (CrPC) — Section 439(2), 482
Drugs and Cosmetics Act, 1940 — Section 13, 13(1), 13(2), 22, 22(3)
Penal Code, 1860 (IPC) — Section 120B, 420, 487
Trade Marks Act, 1999 — Section 63, 65

Citation : (2011) 8 RCR(Criminal) 1870 : (2011) 1 RLW 715

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—By way of this criminal misc. petition filed u/s 482 of CrPC, the Petitioner has implored to quash and set-aside the order dated 9th February, 2010, whereby the learned sessions Judge, Jaipur City, Jaipur cancelled the bail granted to Petitioner Navneet Sharma by Chief Judicial Magistrate, Jaipur vide order dated 8th January, 2010 in a case pursuant to FIR No. 311/2009 of Police Station, Transport Nagar, Jaipur registered for the offences u/s 420, 487, 120B of Indian Penal Code; 18(a)(i)/27(a)(i), u/s 27(b)(i), 27(c), 27(d), 18(c)/27(b)(ii) of Drugs and Cosmetics Act, 1940; u/s 102, 103, 104 of Trade-mark Act; and Section 63, 65 of Copyright Act.

2. The nub of the prosecution case is that on 23rd December, 2009, one Shri Ashok Kumar Mittal, Drugs Control Officer, Jaipur accompanied with police force, reached at the house of Sattar Quareshi situated at Amagarh Kachhi Basti, Parvat Colony, conducted a raid and found there cap sealing, labeling, packing material etc. used for packing manufacturing drugs and 12 types of allopathic medicines and 2 types of ayurvedic medicines in huge quantity, the prescription of which was very much in vogue at that time. Akram and Nissar were found

entailed manufacturing these medicines. The Drug Control Officer took samples of medicines, seized the articles and asked them to show license to manufacture drugs, but they failed to show any such license. Having registered the case, the arrest of the Petitioner was effected by police, who was released on bail by CJM, Jaipur vide order dated 8th January, 2010. The State impugned the bail order assailing the same to have been passed without jurisdiction and in a mechanical manner by CJM, Jaipur. Learned Sessions Judge, Jaipur City, Jaipur cancelled the bail granted to the Petitioner and thus, this petition u/s 482 of Code of Criminal Procedure.

3. Heard the learned Counsel for the Petitioner as also the learned PP appearing for the State and carefully perused the relevant material available on record.

4. Learned Counsel for the Petitioner canvassed that bail once granted by the Court to the accused could not be cancelled u/s 439(2) of Code of Criminal Procedure unless there were acts on the part of the accused tending to prejudice or jeopardize course of justice. He cited three judgments reported in 2009(1)WLC 751 : 2006(3)WLC 97; and 2008 (3)WLC 563 in support thereof.

5. E Converso, learned PP appearing for the State contended that CJM, Jaipur was not empowered to grant bail to the accused Petitioner in an offence u/s 27, 28, 28A and 30 of Drugs and Cosmetics Act, 1940. He could do so in special circumstances, but he had to assign reasons as also the circumstances for granting bail. The order of bail has been passed in a mechanical manner and the learned Sessions Judge rightly cancelled the bail granted to the Petitioner and thus the petition deserves to be dismissed.

6. Having reflected over the submissions made at the bar and carefully scanned the impugned orders including the relevant provisions of law, it is noticed that a huge quantity of medicines, drugs and raw material was found at the house of Sattaf Quareshi when the raid was conducted by Drug Control Officer accompanied with police force. SHO, Police Station, Transport Nagar registered FIR No. 311/2009 in the offences u/s 420, 487, 120B of Indian Penal Code; 18(a) (i)/27(a)(i), 27(b)(i), 27(c), 27(d), 18(c)/27(b)(ii) of Drugs and Cosmetics Act, 1940; u/s 102, 103, 104 of Trade-mark Act; and Section 63, 65 of Copyright Act. The offences u/s 27(a) & 27(c) are punishable with sentence of imprisonment, which may extend to imprisonment for life. The accused for these offences shall be punished with not less than seven years" imprisonment. Section 36AC(1)(b) of Drugs and Cosmetics Act, 1940 bars grant of bail for these offences, which reads thus:

Section 36AC(1)(b): "No person accused, of an offence punishable under Clauses (a) and (c) of Sub-section (1) of Section 13, Clause (a) of Sub-section (2) of Section 13, Sub-section (3) of Section 22, Clauses (a) and (c) of Section 27, Section 28, Section 28A, Section 28B and Sub-sections (1) and (2) of Section 30 and other offences relating to adulterated drugs or spurious drugs, shall be released on bail or on his own bond unless-

(i)

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. A bare perusal of the provisions of Clause (b) of Sub-section (1) and Sub-section (2) of Section 36AC reveals that the Court could grant bail only when the Court was satisfied that there were reasonable grounds for believing that the accused was not guilty of such an offence and that he would not likely to commit any offence while on bail. Sub-section (2) further makes the law of bail more stringent contemplating that the limitation on granting of bail specified in Clause (b) of Sub-section (1) was in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

8. Despite there being stringent provisions with regard to bail u/s 36AC of Drugs and Cosmetics Act, 1940, CJM, Jaipur City in a mechanical manner granted bail without applying his mind and without appreciating the gravity of offences as also the evidence collected therefore by the Investigating Officer during investigation. The bail order dated 8th January, 2010 passed by CJM, Jaipur is a cyclo-style piece of paper, wherein the name of the accused and the Sections of the Act have been filled in and in the last paragraph of the order, the amount of bail bond has been entered into. This order clearly reveals that the bail was granted to the accused by CJM, Jaipur in a mechanical manner without application of any mind to the legal provisions. It seems that CJM, Jaipur did not even care to look into the provisions of the Drugs and Cosmetics Act, 1940 nor cared to ascertain as to whether the offences were punishable with life imprisonment or not. As stated above, the offences u/s 27(a), 27(c) are punishable with sentence of imprisonment, which may extend to life imprisonment, but in the bail order passed by the CJM, it is mentioned that none of the offence wherein the accused Navneet Sharma was alleged to have been involved was punishable with imprisonment for life. It is the height of the carelessness and negligent attitude of the Presiding Officer. Despite there being an embargo, learned CJM, sans caring all the provisions of law, granted bail to the Petitioner and thus, he is found to have abused the process of the Court. The act of such a senior Officer posted as Chief Judicial Magistrate, that too at a place like Jaipur is worth deprecating. Learned Sessions Judge has rightly cancelled the bail granted to the Petitioner by CJM, Jaipur. The impugned order dated 9th February, 2010 passed by the learned Sessions Judge, Jaipur City, Jaipur is found to be just and proper, based on cogent reasoning, with which I fully concur. The learned Sessions Judge is further found to have critically examined and properly appreciated the provisions of law and the impugned order is found not to have suffering from any factual or legal infirmity.

9. I have gone through the judgments cited by the learned Counsel for the Petitioner, but they do not seem to hold good in the facts and circumstances of

the instant case.

10. It has been consistently held by the Hon''ble Apex Court in plethora of cases that the inherent powers u/s 482 of Code of Criminal Procedure can be invoked only in the rarest of rare cases very sparingly, that too with circumspection.

11. For the reasons stated above, the criminal misc. petition filed u/s 482 of Code of Criminal Procedure by the Petitioner, being bereft of any merit, stands dismissed.