
(2012) 12 RAJ CK 0030

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 7770 of 2012

Rajesh Purohit @ Bholiya

APPELLANT

Vs

State of Raj

RESPONDENT

Date of Decision : 15-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(4), 173, 439
Drugs and Cosmetics Act, 1940 — Section 17, 17(B), 17B, 27, 32
Penal Code, 1860 (IPC) — Section 120B, 274, 275, 276, 420
Trade Marks Act, 1999 — Section 103, 104

Citation : (2013) 3 Crimes 117 : (2013) 2 RLW 1461 : (2013) 1 RLW 427

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : N.K. Bohra, for the Appellant; Anil Joshi, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Shri Sandeep Mehta, J.—Heard learned counsel for the petitioner and learned Public Prosecutor. Perused the case diary. The instant bail application has been filed u/s 439 Cr.P.C. by the petitioner Rajesh Purohit @ Bholiya s/o Late Rameshchandra Goriya who has been arrested in C.R. No. 59/2012 registered at Police Station Khanda Falsa, Jodhpur for the offences under Sections 274, 275, 276, 420, 120-B. I.P.C. and 103, 104 Trade Mark Act and Section 17-B & 27 Drugs & Cosmetics Act.

2. Succinctly stated the facts of the case are that the S.H.O. P.S. Khanda Falsa, Jodhpur as well as the Drug Control Officer, Jodhpur received a source information regarding the transaction of spurious Mero-CD, Merosul (Meropenam) injections. The search of a drug store named Nakoda Medicos was undertaken on 26.5.2012 and certain injections were seized under the suspicion that they were spurious. The proprietor of the Medical Store Tansukh Vadera was arrested. Thereafter certain other medical stores viz. Mehta Medical, Varsha Medicos, Amar Shanti Medicos, Kakkad Medicos were also raided on the basis of

sale of the spurious injections made to decoys and recoveries of the spurious injections were also made from these medical stores. An F.I.R. No. 59/2012 under Sections 274, 275, 276, 120-B, 420 I.P.C. and 103, 104 Trade Mark Act and 17-B and 27 of the Drugs and Cosmetics Act was registered at the P.S. Khanda Falsa and investigation commenced. The proprietors of the said stores viz. Kapil Kakkar, Manish Mehta, Sumer Singh, Arun Chug, Ajay Choudhary etc. were arrested. A report was taken from the original manufacturer of the injections i.e. M/s. Arion Healthcare and it was revealed that the injections seized were fake and spurious. Investigation and analysis of the seized injections revealed that the injections which had been seized by the officers of the Drugs Department and the police officers and also the ones sold to the decoys being Mero CD and Merosul injections were fake and spurious. The drug is said to be a life saving drug. The analysis report dated 6.7.2012 was received and it was found that the presence of the life saving salt was not found at all in the injections. The arrested accused who were the owners of the medical stores produced the bills of purchase to the I.O. showing that the injections in question had been supplied by the petitioner Rajesh Purohit @ Bholiya. On this the petitioner Rajesh Purohit and Kalyan Joshi were apprehended. The statements of two witnesses Suresh Acharya and Shyamlal Vaishnav were recorded and they deposed that it was the petitioner who got the labels and the boxes of the spurious injections printed through them. The investigation further revealed that Rajesh Purohit was a medical representative but his authority to deal in medicines came to an end about 10 years ago but despite that he continued to deal in the medicines. The evidence collected also revealed that the spurious injections in question were got manufactured by him. Evidence was also collected to the effect that he got printed the counterfeit and forged labels and boxes of the spurious injections from Rama Printers, Jaipur. Evidence was also collected to the effect that the petitioner used the services of co-accused Ajay Chaudhary for the purpose of downloading the label designs from the official website of the Company and thereafter placed the order for printing of the boxes to Rama Printers and packed the spurious injections after appending counterfeit slips in the boxes bearing counterfeit labels. During the course of investigation 1016 counterfeit labels of injections and 30 boxes bearing fraudulent markings were also recovered from the possession of the petitioner from his own residential house. Evidence about E-mail sent by the petitioner for the purpose of procuring counterfeit labels and boxes was also collected. After the collection of the said evidence the petitioner has now been charge-sheeted in the matter.

3. The petitioner who is in judicial custody has now approached this Court for being released on bail.

4. Shri N.K. Bohra, learned counsel for the petitioner vehemently contended that the petitioner has been falsely implicated in this case. He submits that merely by the recovery of counterfeit labels and the boxes, it cannot be concluded that the petitioner was dealing in the spurious medicines. He further contended that similar allegation regarding procurement of fraudulent counterfeit label has been

made against the co-accused Ajay Chaudhary who stands released on bail by this Court vide order dated 6.10.2012 passed in Bail Application No. 7320/2012. He also submitted that all the dealers from whose shops recoveries of spurious injections were made have been granted bail by this Court viz. Manish, Arun Chug, Suresh, Banshi @ Tansukh Vadera, Kapil Kakkad and Sumer Singh. He submitted that by virtue of Section 32 of the Drugs and Cosmetics Act and the Rajasthan Drug Rules, the cognizance of an offence u/s 17(B) of the Drugs and Cosmetics Act cannot be taken except upon a complaint filed by the authorised officer in this regard and as no complaint has been filed, the whole of the proceedings going on against the petitioner are vitiated. He further submitted that as there is no direct evidence on the record to show that the petitioner supplied the spurious injections to anybody by projecting them to be genuine, prima facie the offence u/s 420 I.P.C. cannot be made out against him. He submitted that the charge-sheet has already been filed in the matter and as such, the petitioner is entitled to be released on bail. He has relied upon the following decisions in support of his arguments:-

1. Sharad Kumar Vs. CBI,
2. Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others,
3. Moti Ram and Others Vs. State of Madhya Pradesh,
4. Satish Chand Vs. State of Haryana reported in 2004(1) Cr. Court Cases 443(P&H);
5. Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another,
6. Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab,

5. Relying upon the aforesaid decisions, he vehemently urges that as there is no complaint of the Drug Inspector and as no sanction to file the complaint has been procured, the proceedings against the accused for the offence u/s 17 of the Drugs and Cosmetics Act are absolutely illegal and an abuse of the process of the Court. He further submitted that as the similarly situated accused have been granted bail by this Court, the petitioner is also entitled to be released on bail.

6. Learned Public Prosecutor has vehemently opposed the submissions. He submitted that the case of the other accused persons who have been granted bail by this Court stands on a different footing from the petitioner. He submitted that the petitioner is the master mind behind the whole racket involving manufacture and supply of spurious life saving injections and due to the act of the petitioner number of unsuspecting victims who were administered the spurious injections have lost their lives. He further contended that the petitioner is the person who is responsible for manufacturing the spurious injections and supplying the same to dealers and as a result thereof the unsuspecting innocent victims have purchased the injections and have suffered, and therefore, the petitioner does not deserve to be granted bail. He, therefore, prays that the application for bail deserves to be rejected.

7. Heard and considered the arguments advanced, perused the record carefully and gave a thoughtful consideration to the judgments cited by the counsel for the petitioner. The first contention of the learned counsel for the petitioner in this case is that the proceedings for the offence u/s 17B of the Act cannot be continued against the petitioner because no complaint has been filed by the authorised person in this case. The said contention need not hold this Court for a moment. In this case the F.I.R. which was registered was in relation to the various offences involving the cognizable offences under the I.P.C. and the Trade Marks Act and the Drugs and Cosmetics Act. After the seizures were made and the drugs were sent for analysis, it was confirmed that the seized drugs/injections are spurious and thereafter commission of the offence u/s 17B of the Drugs & Cosmetics Act was firmly established. Law in this regard is well settled that in the case arising out of a single transaction wherein some of the offences are cognizable and others are non-cognizable and the trial is to be conducted together then the Court can try cognizable as well as non-cognizable offences despite no complaint having been filed as regards the non-cognizable offences. Section 155(4) of the Cr.P.C. leaves no room for doubt for this proposition. Initially when the F.I.R. was registered, at that stage there was a specific allegation and evidence on record disclosing the commission of different offences including various cognizable offences under the different sections of Indian Penal Code. The police, therefore, definitely had the power to investigate the matter. Subsequently, the commission of the offence u/s 17B of the Drugs and Cosmetics Act was also confirmed as the analysis report of the seized injections was received disclosing that the life saving salt was totally missing from the injections. The injections were thus found to be spurious. In this view of the matter, this Court is of the opinion that the police was very much entitled to file a charge-sheet against the accused and there was no impediment on the Investigating Agency in filing a charge-sheet for the offences under Sections 274, 275, 276, 420, 120-B I.P.C. and 103, 104 Trade Mark Act and Section 17-B & 27 Drugs & Cosmetics Act.

8. The contention of the learned counsel for the petitioner that as per Rule 51 sub-clause 5 of the Rajasthan Drugs Rules only the Drug Inspector was authorised to file the complaint is concerned, again this argument is also of no avail to the petitioner. Section 32 of the Drugs and Cosmetics Act reads as below:-

32. Cognizance of offences.-(1) No prosecution under this Chapter shall be instituted except by-

(a) an Inspector; or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.

9. Thus, from the amendment which has been brought into the provision from 1987, it becomes apparent that the prosecution under this chapter can be instituted by the person aggrieved or by a recognised association. The offence u/s 17B of the Act is punishable u/s 27 of the Drugs and Cosmetics Act and is punishable with a minimum punishment of 5 years and may extend to life term also as per the amendment brought about in the year 2009. Obviously, the offence is a cognizable offence, therefore, there is no force in the argument advanced by the learned counsel for the petitioner that for the said offence the filing of the complaint is mandatory. Sub-section (3) of Section 32 also provides that nothing contained in this chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes any offence under this chapter. Since, the act of the accused constituted offence under Chapter-4 of the Drugs and Cosmetics Act as well as under the Indian Penal Code, therefore, a charge-sheet can very well be laid for both these offences and the accused can be tried jointly for these offences at one trial.

10. That apart even a report u/s 173 of the Cr.P.C. disclosing a non cognizable offences is deemed to be a complaint within the meaning of Sub-Section 2(d). In the case in hand, the police officers acting upon the source information sent the decoys got purchased the injections from the concerned dealers. The injections were found spurious on analysis. Therefore, the investigation officer or the seizure officer can very well be said to be aggrieved person referred to in Section 32 of the Drugs and Cosmetics Act, and thus, the proceedings of the charge-sheet cannot be held to be vitiated.

11. Learned counsel for the petitioner has further contended that no sanction as required u/s 33M of the Drugs and Cosmetics Act had been procured before launching the prosecution, and therefore, the prosecution of the petitioner is illegal. Suffice it to say that the sanction which is warranted u/s 33M of the Act is for the prosecution under Chapter IVA of the Drugs and Cosmetics Act. The petitioner is being prosecuted for the offence u/s 17B of the Act which falls in the Chapter IV and thus no sanction is required for initiating the prosecution.

12. Now, coming to the judgments which have been relied upon by the learned counsel for the petitioner in support of his contention that the petitioner is entitled to be released on bail in this case. The argument advanced by the learned counsel for the petitioner that the petitioner's case is similar to that of

the other accused persons who have been granted bail by this Court, and therefore, the petitioner is entitled to be released on bail is unacceptable. From the material available on record, there is ample evidence to the effect that the petitioner is manufacturer and the distributor of the spurious drugs. The other accused persons who have been granted bail by this Court are not alleged to be the manufacturers or distributors of the drug in question. Even the accused Ajay Chaudhary in relation to whose case much stress has been laid by the petitioner was simply a tool used by the petitioner for downloading the packaging design of the drug in question. There is a clinching evidence on record which shows that it is the petitioner who not only got printed the spurious boxes and labels but also packed the same with the spurious drugs and then distributed the same to various dealers. Therefore, the petitioner's case cannot be said to be at par with that of the other accused persons. It is not out of place to state here that in the judgments which have been cited by the learned counsel for the petitioner, the Apex Court has time and again held that normally the accused should not be kept incarcerated in prison until held guilty by the court concerned. But the Court has also cautioned that before granting bail the gravity and nature of allegations have to be considered. In various decisions the Apex Court has added the note of caution that the bail cannot be granted as a matter of rule or course without considering the nature of offence and gravity of allegations levelled against the accused.

13. Recently the Hon'ble Apex Court considering the concept of bail in the case of Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Another, after considering the earlier decisions of the Apex Court has held as below :-

We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. (See: State Vs. Amarmani Tripathi, ; Prahlad Singh Bhati Vs. N.C.T. Delhi and Another, ; Ram Govind Upadhyay Vs. Sudarshan Singh and Others,

12. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor (supra), a

Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows:

Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.

(See also: The State of Maharashtra Vs. Ritesh Wanjari, ; Panchanan Mishra Vs. Digambar Mishra and Others, ; Vinay Kumar Vs. Narendra and Others, Anwari Begum Vs. Sher Mohammad and Another,

13. We are constrained to observe that in the instant case, while dealing with the application of the accused for grant of bail, the High Court completely lost sight of the basic principles enumerated above. The accused, in the present case, is alleged to have committed a heinous crime of killing an old helpless lady by strangulation. He was seen coming out of the victim's house by a neighbour around the time of the alleged occurrence, giving rise to a reasonable belief that he had committed the murder. We feel that under the given circumstances, it was not the stage at which bail u/s 439 of the Code should have been granted to the accused, more so, when even charges have not yet been framed. It is also pertinent to note that, as stated above, the Additional Chief Judicial Magistrate had rejected three bail applications of the accused but the High Court did not find it worthwhile to even make a reference to these orders. In this regard, it would be useful to refer to the following observations echoed in Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another,

In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted." (See also: Ram Pratap Yadav Vs. Mitra Sen Yadav and Another,

14. In the aforesaid case the Apex Court has held that the nature and gravity of the accusation and severity of the punishment in the event of conviction are the guidelines which have to be kept in mind while granting bail.

15. In the case of Prakash Kadam and Vs. Ramprasad Vishwanath Gupta and Another, the Hon'ble Apex Court considering the concept of bail vis-?-vis the cancellation of bail has held as below:-

It was contended by learned counsel for the appellants before us, and it was also contended before the High Court, that the considerations for cancellation of bail is different from the consideration of grant of bail vide Bhagirathsinh s/o Bhagirathsinh Judeja Vs. State of Gujarat, Dolat Ram and Others Vs. State of

Haryana, and Ramcharan Vs. State of M.P.,

17. However, we are of the opinion that that is not an absolute rule, and it will depend on the facts and circumstances of the case. In considering whether to cancel the bail the Court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same Court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/revisional Court.

18. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.

19. This is a very serious case and cannot be treated like an ordinary case. The accused who are policemen are supposed to uphold the law, but the allegation against them is that they functioned as contract killers. Their version that Ramnarayan Gupta was shot in a police encounter has been found to be false during the investigation. It is true that we are not deciding the case finally as that will be done by the trial court where the case is pending, but we can certainly examine the material on record in deciding whether there is a prima facie case against the accused which disentitles them to bail.

16. Since in this case, the petitioner is a principal accused who manufactured/procured and then distributed the spurious life saving drug thereby putting to jeopardy the lives of unsuspecting innocent ailing people, this Court is of the opinion that there cannot be any justification for accepting the instant application for bail. The act of the accused falls in the category of a heinous crime affecting the lives of the innocent citizens and strikes at the very core of the society and therefore he is not entitled to be released on bail. There is every possibility that the accused if released on bail would again indulge in his nefarious activities. Accordingly, the application for bail is rejected.