

(2023) 08 SHI CK 0130

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1518 Of 2023

?Rajni Bhargava

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 24-08-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Drugs and Cosmetics Act, 1940 — Section 18(a)(i), 18(c), 17B(c), 27, 36(AC)

Citation : (2023) 08 SHI CK 0130

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : Narender Guleria, Lovneesh Thakur, Adhiraj Singh Thakur, Mohinder Zharaick, H.S.Rawat, Tejasvi Sharma, Avni Kochhar Mehta, Leena Guleria

Judgement

Virender Singh, J

1. Applicant-Rajni Bhargava has filed the present application, under Section 439 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC'), for seeking, her release on bail, in a case under Sections 18(a)(i), 18 (c) read with section 17B(c) and 36 (AC), punishable under Section 27 of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act').

2. According to the applicant, she has falsely been implicated, in the above-noted case, as, she has nothing to do with the offences, for which, she has been arrested, in this case.

3. According to her, she is a law abiding citizen and has committed no offence. She is stated to have been implicated, in this case, on account of business rivalry, with other competing firms.

4. The investigation, in the present case, is stated to be complete and nothing is to be recovered from or at the instance of the applicant. Her business premises were sealed alongwith record by the Drug Inspector on 4th March, 2023 and she is in judicial custody since 26th May, 2023.

5. Apart from this, the applicant has asserted that she is an old, sick woman and a chronic patient. The health condition of the applicant has been pleaded in order to get the relief, under Section 36AC of the Act.

6. The applicant has earlier tried her luck by moving the bail application, under Section 439 CrPC, before the Court of learned Special Judge, Nalagarh, District Solan, H.P., which has been dismissed, vide order, dated 9th June, 2023.

7. Apart from this, the learned counsel appearing for the applicant has given certain undertakings, on behalf of the applicant, for which, the applicant is ready to abide by, in case, she is ordered to be released on bail.

8. When put to notice, the State, through Drug Inspector, has filed the status report, disclosing therein, that on 3rd March, 2023, an information was received by the complainant that Drug Inspector, Varanasi, had seized some spurious medicines at Varanasi, wherein, in the preliminary investigation, the involvement of Rajni Bhargava (applicant), who is having a manufacturing Unit at Baddi, has been found.

8. 1. During the investigation, it has been found that the applicant is running a drug manufacturing Unit at Baddi, in the name of M/s Cyper Pharma, situated at Village Gullarwala, Sai Road Baddi, Solan, H.P. On 3rd March, 2023, the premises of M/s Cyper Pharma were visited and three samples were collected, for testing and analysis. Thereafter, a team was constituted by the State Drug Controller, for investigation of the matter of sale of spurious drugs by M/s Cyper Pharma. The premises were inspected on 4th March, 2023, by the team of Drug Inspectors, alongwith independent witnesses.

8.2. During the course of inspection, spurious medicines and packing materials of spurious drugs have been found, particulars whereof, are as under:

(a) Packing material of Corpod-CV (Cefpodoxime & Potassium Clavulanate Tablets & INNCIP-500 Tablets (Cefuroxime Axetil Tablets I.P.) labeled as manufactured by M/s HPHIN Pharmaceuticals, 110/2, Sec. 5, Sidcul, U.S. Nagar (U.K.)

(b) Packing material of CECEF-200 LB (Cefixime, trihydrate with Lactic Acid Bacillus Tablets I.P.), B.No. SLH-2101, Mfg. Date 01-2022, Exp. Date 12-2023 labeled as manufactured by Mfd. by Hours Pharmaceuticals, Sec – 303, 3rd Floor, Market Manimajra, Chandigarh – 160101.

(c) Packing material of Cipdiox-200 Tablets (Cefpodoxime Proxetil Tablets I.P. 200 mg), B. No. XBT0039393, Mfd. Date 12-2017, Exp. Date 11-2019, labeled as manufactured by Mfd. by GGS Pharmacy 1002 Sarthik I opp. Rajpath Job S.G. Road Ahmedabad (Gujarat).

(d) 79 tablets of product C-Cef OLB Tablets (Cefixime, Ofloxacin & Lactic Acid Bacillus Tablets) along with one empty blister packed during trial, having B.No. SLH-2101, Mfg. Date 01-2022, Exp. Date 12-2023, labeled as manufactured by

Mfd. by M/s Pragti Remedies, Plot No. - 143, G.S. Road Link, Ulubari, Guwahati, Assam-781008.”

8.3. It is the further case of the Drug Inspector that on inquiry, the aforesaid expired drugs were found to be purchased through invoice No. SVPL00121, dated 11th November, 2022, from M/s Sarvesh Jee Lifecare Pvt. Limited (Pharmaceutical Distributor), B 5 Sector F Aliganj Lucknow. The firm was also found to be involved in repacking of such expired drugs by de-foiling. On demand, the applicant could not produce the wholesale drug license, for purchase of the drugs.

8.4. As per the status report, samples of five drug products were taken, for the purpose of tests and analysis on Forms-17 and 17A and the remaining stock of spurious drugs and expired drugs, alongwith the packing materials, was seized on Form-16, under the Act. The premises were also sealed.

8.5. On 6th March, 2023, custody of seized medicines and materials was obtained from the Court of learned Judicial Magistrate First Class, Nalagarh, District Solan, H.P. On 7th March, 2023, samples of the drugs were sent to the Government Analyst, RDTL, Chandigarh, for tests and analysis. Thereafter, notices were served upon the accused (applicant) on 10th March, 2023, 15th March, 2023, 22nd March, 2023 and 26th April, 2023. The said notices were not replied by the applicant.

8.6. The test and analysis report of the samples was received. Thereafter, on 24th May, 2023, a notice was served upon the applicant, through e-mail, to receive the sample testing report and was also directed to join the investigation. Consequently, the applicant has joined the investigation. The applicant was arrested on 24th May, 2023.

8.7. On 25th May, 2023, the premises of M/s Cyper Pharma were inspected, in the presence of independent witnesses and the applicant. During inspection, huge stock of printed packing materials of the spurious products, alongwith the drugs, which were not of standard quality, were recovered.

9. On the basis of the above facts, a prayer has been made to dismiss the bail application.

10. At the time of deciding the bail application, the Court should not discuss the evidence, so collected, by the prosecution, as, the detailed discussion of the evidence, so collected, will adversely affect the case of the prosecution, as well as, of the accused.

11. The applicant has been arrested for the offences, under Sections 18(a)(i), 18 (c) read with Section 17B(c) and 36 (AC), punishable under Section 27 of the Act. Much has been argued by the learned counsel for the applicant that the offences, for which, the applicant has been arrested, are not made out, from the stand, as taken by the Drug Inspector, in this case.

12. It will be proved, during the trial of the case, as to whether the offence is made out or not. At this stage, this Court has to ascertain the fact as to whether the applicant is entitled for the relief, as claimed in the bail application.

13. Under Section 36AC of the Act, stringent conditions have been provided by the Legislature, in its wisdom, which are liable to be satisfied, before releasing the applicant on bail. The provisions of Section 36AC of the Act, are reproduced, as under:

"36AC. Offences to be cognizable and non-bailable in certain cases. — (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence, relating to adulterated or spurious drug and 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 cognizable.

(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) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(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:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 36AB."

14. In Section 36AC of the Act, the limitation, for grant of bail, as specified in Clause (b) of sub-Section (1), is in addition to the limitation, as provided under

the CrPC or any other law, for the time being, in force, on granting of bail.

15. The applicant is in judicial custody. She is a woman and as per the stand, taken by her, she is suffering from various ailments.

16. The role, allegedly, played by the applicant, in the commission of the offences, will be proved during the trial of the case. Moreover, except the present case, no other criminal history of the applicant has been pleaded or argued by the learned Additional Advocate General.

17. Even otherwise, the Legislature, in its wisdom, has provided the window, for releasing the woman or sick or infirm, on bail.

18. In the status report, it has not been apprehended that in case the application is allowed, the applicant will not be available for the trial.

19. So far as the apprehension, that the applicant may interfere with the evidence or influence or allure the witnesses, is concerned, for those apprehensions, reasonable conditions can be imposed.

20. In such situation, this Court is of the view that the application deserves to be allowed.

21. Consequently, the bail application is allowed and the applicant is ordered to be released on bail, in the case of manufacturing and sale/distribution of spurious drugs and not of standard quality drugs, registered under Sections 18(a) (i), 18 (c) read with section 17B(c) and 36 (AC), punishable under Section 27 of the Act, subject to her furnishing personal bond in the sum of Rs. 1,00,000/- (Rupees One Lac), with two sureties, out of which, one should be local, in the like amount, to the satisfaction of the learned CJM Solan/ACJM Nalagarh/JMFC, Nalagarh. This order, however, shall be subject to the following conditions:

a) She shall make herself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

b) She shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

c) She shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer; and

d) She shall not leave the territory of India without the prior permission of the Court.

22. Any of the observations, made hereinabove, shall not be taken as an expression of opinion on the merits of the case and the learned trial Court shall decide the matter uninfluenced by any of the observations made hereinabove.

23. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions is found to be violated by the applicant.

24. The Registry is directed to forward a soft copy of the bail order to the Superintendent of Jail concerned, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

25. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent of Jail concerned is directed to inform this fact to the Secretary, DLSA, Solan. The Superintendent of Jail concerned is further directed that if the applicant fails to furnish the bail bonds, as per the order passed by this Court, within a period of one month from today, then, the said fact be submitted to this Court.