

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12992 of 2023

Applicant :- Rajendra Kumar Goel

Opposite Party :- State of U.P.

Counsel for Applicant :- Akhilesh Chandra Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised. Heard learned counsel for the applicant as well as Sri V.K.S. Parmar, learned A.G.A. for the State and also perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicant in Complaint Case SST No. 574 of 2016, under Sections 27(b)(i), 27(c), 28, 28-A of Drugs and Cosmetics Act, Police Station Chandausi, District Moradabad, with a prayer to enlarge him on anticipatory bail.

3. As per prosecution story, the complaint case was filed by the Drugs Inspector, Ashutosh Kumar Chaubey, alleging therein that on 8.2.2016, a surprise inspection was taken up at M/s Gupta Medical Store, Farai Bazaar, P.S. Chandausi, District Sambhal. During the said inspection, the sample of ESZEPYRIN tablet was taken up. On analysis, it was found misbranded and below standard. The said medicine was being manufactured by M/s Shivalik Health Care (India) Private Limited, and the applicant was its director.

4. Learned counsel for the applicant has stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has the apprehension of his arrest. The applicant has nothing to do with the said offence as alleged by the prosecution. Learned counsel has next stated that the said complaint case has been directly filed before the Special Judge/Sessions Judge, which is barred by law, as the said complaint case ought to have been filed before the CJM, Moradabad and then after committal, the Special Court could have taken cognizance u/s 193 Cr.P.C., as such, the cognizance/summoning order dated 17.12.2016 is liable to be quashed and cannot be taken into consideration. Learned counsel has next stated that the two reports are self contradictory.

The samples of the drugs were taken to the analysts for examination. The applicant had the right to get the drug re-examined, as provided u/s 23(4) of the Drugs and Cosmetics Act and the applicant sent it to the CFSL within the stipulated period. It is stated that the said test was taken up between 22.2.2017 to 28.2.2017, which was also the date of expiry of the drug. It is also stated that the taking up of the test till the last date falsifies the prosecution story and clearly destroys the prosecution case. The said report only says that the matter is not of standard quality, as defined under the Drugs and Cosmetics Act, 1940 and Rules thereunder. Learned counsel has next stated that the said report says that the said tablets contains Paracetamol and Diclofenac Sodium compound, as such, it cannot be stated to be adulterated. The maximum punishment in the instant case is three years except Section 27(c) of the Drugs and Cosmetics Act. As such, the applicant is entitled for anticipatory bail.

5. Learned counsel has placed reliance on the judgement of the Apex Court passed in *Gangula Ashok and another vs. State of A.P.* AIR 2000 SC 740. The relevant paragraphs 23 and 24 read hereinunder:-

"23. It must be noted that the observations of this Court in (A.R. Antulay (supra) were made in connection with the establishment of a Special Court under Criminal Amendment Act of 1952. What is to be pointed out is that a Special Judge appointed under the said Act was given the specific power to take cognizance of the offence without the case being committed to him. Hence the observations in A.R. Antuley's case cannot be profitably utilized to support the interpretation of another Act wherein there is no such specific provision.

24. It is contextually relevant to notice that Special Courts created under certain other enactments have been specially empowered to take cognizance of the offence without the accused being committed to it for trial, (e.g. Section 36-A(l)(d) of the Narcotics Drugs and Psychotropic Substances Act). It is significant that there is no similar provision in the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act."

6. Learned counsel has also stated that the learned Sessions Judge has wrongly taken the cognizance and the said order of taking cognizance is barred by Section 193 Cr.P.C., as no specific provision has been provided in the Drugs and Cosmetics Act to take the cognizance directly. To avoid the brevity, the said provision is not being reproduced hereinunder. The Drugs and Cosmetics Act only provides for formation of Special Courts under Section 36AB but it is not provided there that it shall try the matters without committal.

7. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further submitted that the applicant has no criminal antecedents. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

8. On the other hand, learned A.G.A. has vehemently opposed the prayer for grant of anticipatory bail on the ground that Section 27(c) of the Drugs and Cosmetics Act is punishable with life imprisonment, as such, the applicant is not entitled for anticipatory bail. However, he could not dispute the fact that the applicant has no criminal antecedents.

9. On due consideration to the arguments advanced by the learned counsel for the parties, the judgement of the Apex Court passed in ***Gangula Ashok* (supra)**, coupled with the fact that the applicant has no criminal antecedents, and in view of the law laid down by the Apex Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98**", the applicant is entitled to be granted anticipatory bail in this case.

10. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is **allowed**.

11. In the event of arrest of the applicant, **Rajendra Kumar Goel** involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

- i. that the applicant shall make himself available for interrogation by a police officer as and when required;
- ii. that the applicant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence;
- iii. that the applicant shall not leave India without previous permission of the court;
- iv. that the applicant shall not tamper with the evidence during the trial;
- v. that the applicant shall not pressurize/ intimidate the prosecution witness;
- vi. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

12. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

13. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 12.12.2023
Shalini