

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Criminal Case No.2548 of 2015

Ramesh Mahawar, S/o Shri Ramrichpal Mahawar, aged about 62 years,
R/o Q-1, Anupam Nagar, Police Station Pandri, Raipur, Civil & Revenue
District Raipur (C.G.)

---- Applicant

Versus

State of Chhattisgarh, through the Police Station Chakarbhata, District
Bilaspur (C.G.)

---- Non-applicant

For Applicant: Mr. B.P. Sharma with Mr. Manilal Sakat, Advocates.

For Non-applicant: Mr. A.S. Kachhawaha, Additional Advocate General
with Mr. Anupam Dubey, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

06/07/2015

1. The accused/applicant has moved this bail application under Section 439 of the Code of Criminal Procedure, 1973 for releasing him on regular bail during trial in connection with Crime No.350/2014 {S.T. No.34/2015 pending in the Court of Special Judge (Atrocities), Bilaspur}, registered at Police Station Chakarbhata, Distt. Bilaspur for the offence punishable under Sections 304 Part-II, 308, 420, 467, 468, 471, 120B, 270 and 276 read with Section 34 of the IPC.
2. Case of the prosecution, in brief, is that the present applicant being Managing Director of M/s. Mahaveer Pharma Ltd., manufactured medicine and distributed the same through M/s. Amit Agencies, Raipur and M/s. Kavita Laboratories had purchased it from M/s. Amit Agencies

and supplied medicine Ciprocin-500 having batch Nos.14820 CD & 14101-CD and supplied to the Chief Medical & Health Officer, Bilaspur (for short, CMHO) in pursuance of tender notice dated 11-9-2014 and 12-9-2014.

3. It is further case of prosecution that the State Government through the Chief Medical and Health Officer (CMHO) on 8-11-2014 organized a sterilization camp at Seth Nemichand Jain Cancer Hospital, Pendari (Sakri) in which Dr. R.K. Gupta has performed Tubectomy procedures (TT operations) of 83 females. Thereafter, all 83 patients who had undergone TT operations were given the medicines in shape of medicine kit prepared and provided by the BMO, Takhatpur, containing Ciprocin-500 (antibiotic) and other medicines and they were discharged from the camp on the same day i.e. 8-11-2014 and after reaching their respective residences, as per advice of the Doctor all the female patients took the medicine namely Ciprocin-500 as advised which were given to them in the hospital with the medicine kit, immediately thereafter they developed the symptom of pain, vomiting, nausea, congestion in the respiratory system and other discernible complications including brisk fall of blood pressure etc., and they got admitted in the District Hospital, Chhattisgarh Institute of Medical Science and also in Apollo Hospital, Bilaspur for their treatment but out of 83 patients, 13 female patients died.
4. It is further case of the prosecution that said medicine Ciprocin-500 supplied by M/s. Kavita Laboratories/applicant's firm were found to be substandard and containing Zinc Phosphide which is used for killing rats, and the samples of the seized medicine Ciprocin-500 were sent to

Shree Ram Institute for Industrial Research Centre, National Institute of Immunology, New Delhi and also to Qualichem Laboratories, Nagpur for chemical examination and report has been received in which presence of Zinc/Aluminum Phosphide based on phosphine gas has been found and according to report sent by National Institute of Immunology, New Delhi, 500 mg of Ciprocine 500 has capacity to cause acute toxic shock in Rats within 24 hours and in that view of the matter above stated offences have been registered against the applicant and other co-accused persons by two police stations and the applicant herein has been arrested in connection with the aforesaid offences.

5. Mr. B.P. Sharma, learned counsel appearing for the applicant, would submit that no offence is made out, challan has been filed against the applicant before the trial court, investigation has already been completed and no further custodial interrogation of the present applicant is required by the prosecution as in the charge sheet, the applicant has only been charged for offence under Sections 420, 120B, 467, 468, 471, 270, 276 and 34 of the IPC. He would further submit that test report from Central Forensic Science Laboratory, Hyderabad has already been received by the prosecution in which no poisonous substance has been found by the said laboratory, on the other hand, in the said report, Ciprocine has been found in all the samples. Viscera reports have also been received and no poison has been found in the said viscera reports which clearly rule out any poisonous substance in Ciprocine said to be manufactured by the present applicant. He would also submit that no offence is made out against the applicant and for the sake of argument, at the best, offence under Section 270/276 of the

IPC would be made out which is bailable offence and punishment prescribed is six months imprisonment against which the applicant is in jail for more than six months. Referring to challan documents, according to the charge-sheet filed and case projected before the trial Court, he would submit, the operation theatre and related places were found severely infected and the instruments and surgical operation premises were also found with bacterial infective. He would lastly submit that for the offence under Section 120B of the IPC there is no meeting of mind and procedure in taking sample as prescribed in Drugs and Cosmetics Act, 1940 has not been followed in its letter and spirit. He would also submit that the applicant is aged about 62 years, he has already undergone for fairly long time and 92 prosecution witnesses are yet to be examined and no witness has supported the case of the prosecution against the present applicant. Looking to serious illness, the applicant remained in Government Hospital, Raipur for a long time and no useful purpose would be served by keeping him in jail, therefore, present applicant be released on bail.

6. On the other hand, Mr. A.S. Kachhawaha, learned Additional Advocate General assisted by Mr. Anupam Dubey, learned Deputy Govt. Advocate for the State opposing the bail application would submit that filing of the charge-sheet and the receipt of report from Hyderabad Test Laboratory and viscera report from FSL, Raipur, would not entitle the applicant to claim regular bail as there is overwhelming evidence available on record to implicate the present applicant in the offence in question, therefore, the applicant does not deserve to be released on bail.

7. I have heard learned counsel for the parties and gone through the case diary with utmost circumspection.
8. Taking into consideration the facts and circumstances of the case, nature and gravity of the offence, the manner in which the said medicine Ciprocin 500 was allegedly manufactured by the applicant and supplied through his stockist M/s. Amit Agencies to M/s. Kavita Laboratories and the said medicine was found to be not of standard quality by the Government Analyst, Central Drug Laboratory, Kolkata, in its report dated 19-11-2014 and further, two laboratories namely Shree Ram Institute for Industrial Research, New Delhi and National Institute of Immunology, New Delhi have confirmed the presence of poisonous substance namely Zinc / Aluminium Phosphide on the basis of Phosphine Gas in the sample referred to and the toxic effect of said medicine have caused serious health hazard which had taken lives of several women and further taking into account the severity of punishment prescribed for the aforesaid offences and thus considering the nature of accusations, the fact that the gravity of offences which the applicant is charged are extremely serious, and bail application of other co-accused i.e. Director of M/s. Mahaveer Pharma Ltd., has already rejected by co-ordinate Bench and the case of the present applicant is similar to that of Sumit Mahawar, I am fully satisfied that it is not appropriate to order for release of the applicant on regular bail. The bail application is, therefore, rejected.

Sd/-
(Sanjay K. Agrawal)
Judge