

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Criminal Case No.2636 of 2015

Ramesh Mahawar, S/o Shri Ramrachpal Mahawar, aged about 62 years, R/o Q-9, Anupam Nagar, Police Station Pandri, Raipur, Civil & Revenue District Raipur (C.G.)

---- Applicant

Versus

State of Chhattisgarh, through the Police Station Pandri, District Raipur (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.373/2014 (Criminal Case No.372/2015 pending in the Court of Chief Judicial Magistrate, Raipur), registered at Police Station Pandri, Raipur for the offence punishable under Sections 420, 467, 468 and 471 read with Section 34 of the IPC.
2. Case of the prosecution, in brief, is that the applicant and one Sumit Mahawar are, respectively, Managing Director and Director of the Company known as M/s. Mahawar Pharma (P) Ltd., and having a license of manufacturing drugs, but did not manufacture Ciprocin 500

and purchased it from the open market and sold the same to the State and to the general public proclaiming that they are the manufacturer of said Ciprocine 500, and thereby committed the offence.

3. Mr. B.P. Sharma, learned counsel for the applicant, submits that the company of the applicant has not committed any offence and detention of the present applicant is wholly unauthorized. He further submits that if the offence has been committed by the company under the provisions of the Indian Penal Code, then the procedure prescribed in Section 305 of the CrPC has to be followed by the investigating authority and thereby one representative as authorized by the company can only be prosecuted for the offence under the provisions of the IPC and as such, detention and prosecution of Managing Director of the Company / applicant is clearly unauthorized and bad in law. He would also submit that for the said Ciprocine 500, M/s. We Care Labs, Mumbai has only been said to be promoter, whereas, M/s. Mahawar Pharma (P) Ltd., is the manufacturer of said drug and in fact, it has been manufactured by the present company which is also apparent from the material seized by the team of Drug inspectors from the manufacturing site of the said drugs and it cannot be held that the Company of the present applicant has not manufactured the impugned drug Ciprocine 500. He would also submit that seizure and search of the drug in question by the team of Drug Inspectors is wholly unauthorized and at the dictates of the superior officer, as such, the provisions contained in Sections 13, 22, 23 and 32 of the Drugs and Cosmetics Act, have not been followed in its letter and spirit while conducting entire investigation and consequent submission of charge-sheet against the applicant is bad in law. He

would further submit that no offence of cheating has been committed by the present applicant and only in order to detain the applicant, subsequently, offence under Sections 467, 468, and 471 of the IPC have been inserted. He also submits that at the most, offence under the Drugs and Cosmetics Act would be made out against the applicant for which he is entitled to be released on bail, as he has already been charge sheeted for the aforesaid offences and no custodial interrogation is required further and therefore, the application for grant of bail filed on behalf of the applicant be allowed and the applicant be released on bail.

4. Mr. A.S. Kachhawaha, learned counsel appearing for the State, while opposing the submissions would submit that the present applicant having obtained drug license to manufacture drugs and in fact, in the site of manufacturing, various irregularities were noticed as per written complaint made by the then Drug Inspector and they have brought drugs from other company and sold it claiming to be manufactured by the present applicant. He would further submit that name of M/s. We Care Labs, Mumbai, has been used in the said medicine whereas, such company is not in existence; which is apparent from the letter of Registrar of Firms dated 24-11-2014 and its name has unnecessarily been used to cheat the State and general public. Several discrepancies / irregularities / non-compliance of the Rules have been noticed by the team of Drug Inspectors at the alleged place of manufacturing. The said drug was found to be substandard and upon consumption of said medicine, numbers of persons have died and as such, the applicant is guilty of cheating and allied offences thereto. He would also submit that the bail application of Director of the present Company Sumit Mahawar

has been rejected by a coordinate Bench of this Court by order dated 7-4-2015 passed in M.Cr.C.No.804/2015, as such, case of the present applicant is identical to that of the co-accused Sumit Mahawar and therefore, the applicant is not entitled to be released on bail and his application for bail deserves to be rejected.

5. I have heard learned counsel for the parties and gone through the case diary with utmost circumspection.
6. Taking into consideration the nature and gravity of offence, facts and circumstances of the case, taking note of the serious irregularities noticed by the State authorities in the manufacture of drug, use of the name of M/s. We Care Labs, Mumbai, which is said to be a non-existent company by the competent authority, the manner in which the medicine in question is said to have been sold in market without manufacturing by the applicant Company and taking into consideration the fact that bail application of another Director Sumit Mahawar has already been rejected by a co-ordinate Bench and the case of the present applicant is identical to that of co-accused Sumit Mahawar, I am fully satisfied that it is not a fit case for grant of regular bail to the applicant. The bail application is, therefore, rejected.

Sd/-
(Sanjay K. Agrawal)
Judge