

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) NO. 54 of 2015**

Rakesh Khare son of Shri S.P. Khare aged 48 years
 Permanent resident of Arya Colony Tifra Police Station Sirigitti
 Bilaspur (CG)

---Applicant**Versus**

State of Chhattisgarh through Station House Officer Police
 Station Chakarbhata District Bilaspur (CG)

---Non-applicant

For Applicant	:	Mr. Ashish Shrivastava and Mr. Soumya Rai, Advocates
For Non-applicant	:	Mr. Gary Mukhopadhyay, Dy. G.A. and Mr. Varun Sharma, P. L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****27/11/2015**

1. Apprehending arrest in connection with Crime No. 350/2014, registered at Police Station Chakarbhata, District Bilaspur (C.G.), for the offence punishable under Sections 304 Part-II, 308, 120-B, 420, 270, 276/34 of Indian Penal Code, the applicant has filed this application under Section 438 of the Code of Criminal Procedure, 1973 (in short

‘Cr.P.C’) for grant of anticipatory bail.

2. Case of the prosecution, in brief, is that, present applicant being a partner of Kavita Laboratories had supplied medicine Ciprocin-500 having batch Nos.1482-CD and 14101-CD with a fake test certificate of Alpha Analytical Laboratories Indore, allegedly purchased from M/s Amit Agencies, Raipur, the sole distributor of manufacturer M/s Mahavar Pharma Ltd. Raipur, to Chief Medical Health Officer, Bilaspur (for short, CMHO) in pursuance of tender notice dated 11.09.2014 and 12.09.2014.

3. It is further case of prosecution that the State Govt. through Chief Medical and Health Officer (CMHO) on 08.11.2014 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. 08.11.2014 and after reaching their respective residences and as per advice of the doctor all the female patient taken the medicine

namely Ciprocine-500 as advised and 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 to Apollo Hospital Bilaspur for their treatment but out of 83 patients, 13 female patient died.

4. It is further case of the prosecution that said medicine Ciprocine-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 Ciprocine-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 have 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 has been registered against the

applicant and other co-accused persons in two police stations and applicant herein has been arrested in connection with these offences.

5. Learned counsel appearing for the applicant would submit that applicant has not committed any offence and has been falsely implicated in this case, as such, he is entitled to be released on anticipatory bail.

6. On the other hand, learned counsel appearing for the State/non-applicant would submit that regular bail of other co-accused namely Rajesh Khare has been rejected by this Court on 03/02/2015 passed in M.Cr.C. No.260/2015. He would further submit that against the applicant, standing warrant of arrest has been issued on 11/02/2015, therefore, application for anticipatory bail is not maintainable.

7. I have heard learned counsel appearing for the parties.

8. The Supreme Court in case of **Lavesh v. State (NCT of Delhi)**¹ has clearly held that an absconder accused or the proclaimed offender is not entitled for anticipatory bail and observed as under:-

¹ 2012 (8) SCC 730

“From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender” there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail.”

9. Very recently, in the matter of **State of Madhya Pradesh v. Pradeep Sharma**², Their Lordships of the Supreme Court reiterating the principle laid down in **Lavesh (supra)** and following the said decision has held that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code he is not entitled for anticipatory bail by observing as under:-

“The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not co-operated with the investigation, he should not be granted anticipatory bail.”

10. Taking into consideration the nature and gravity of

² AIR 2014 SC 626

offence and further taking into consideration the nature and gravity of offence; sample of medicine in question was found to be substandard as per various laboratories; standing warrant of arrest has already been issued against the applicant and in view of law laid down by Their Lordships in **Lavesh and State of Madhya Pradesh (supra)** that the application for anticipatory bail is not maintainable by a person against whom standing warrant of arrest has been issued, this Court is not inclined to extend the benefit of anticipatory bail in favour of the applicant.

11. Accordingly, the bail application filed under Section 438 of Cr.P.C. is rejected.

Sd/-
(Sanjay K. Agrawal)
JUDGE