

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4186 of 2015

- Sumit Mahawar S/o Shri Ramesh Mahawar Aged About 31 Years R/o Q-9, Anupam Nagar, Police Station - Pandri, Raipur (Chhattisgarh), Civil & Revenue District - Raipur (Chhattisgarh).
--- Petitioner

Versus

- State of Chhattisgarh Through the S.H.O., Police Station - Pandari, District - Raipur (Chhattisgarh).
---- Respondent

MCRC No. 4224 of 2015

- Sumit Mahawar S/o Shri Ramesh Mahawar, Aged About 31 Years, R/o Q-9 Anupam Nagar , Police Station Pandri, Raipur, Civil and Rev. Distt. Raipur Chhattisgarh.
---- Petitioner

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Chakarbhata, Bilaspur Chhattisgarh.
---- Respondent

For the Petitioner : Mr. B.P. Sharma & Mr. M.L. Sakat, Advocates
For the respondent : Mr. Ramakant Mishra, Dy.Advocate General

CAV ORDER

08.12.2015

1. Both M.Cr.C.No.4186/2015 & M.Cr.C. 4224/2015 are repeat bail applications. The earlier bail applications M.Cr.C. No. 804/2015 & M.Cr.C.No.1240/2015 were dismissed on 07.04.2015.
2. M.Cr.C.No.4186 of 2015 is relating to Crime No.373/2014 registered at Police Station Pandri, District Raipur for the offences punishable under Sections 420, 467, 468, 471 & 34 of IPC & M.Cr.C.No. 4224/2015 is relating to Crime

No.350/2014 registered at Police Station Chakarbhata, Distt. Bilaspur for the offences punishable under Section 304-II, 308, 120-B, 420, 270, 276, 467, 468, 471 read with section 34 of IPC.

3. As per prosecution case, Tubectomy operation camp was organized by the Health Department of State on 08.11.2014 at Nemichand Hospital, Kanan Pendari (Sakri), District Bilaspur, wherein one Dr. R.K. Gupta carried out the operations of 83 females. In such camp, after the operations, the patients were supplied with a medicine kit, which contained Ciprocin-500 mg, bearing batch no.14101 CD and Ibuprofen-400 mg. Subsequently, within 3-4 days after operation/consumption of medicines almost all of the patients were admitted to the different hospital at war footing with serious complain and out of it about 13 patients died. According to the prosecution the medicines were provided to the patients to consume it after operation for recovery but instead of recovery, it had different result causing death.
4. According to the prosecution, after primary test, the medicines were found to be substandard and containing Zinc/Aluminum Phosphide. The said Zinc/Aluminum Phosphide are being used for killing of rats. Further investigation revealed that the manufacture was made by M/s. Mahawar Pharma Pvt. Ltd., VIP Estate, Khamhardih, Post Office Shankar Nagar, Raipur, who in turn supplied the medicine to M/s. Kavita Pharma and the applicant is one of the Director in the said company, which is managed along-

with his father, Ramesh Mahawar, who is Managing Director of the Company. According to the prosecution, the present applicant, who was at the helm of affair for such manufacture of medicine Ciprocin 500mg containing poison was the supplier.

5. It is further case of the prosecution, the Ciprocin 500mg having batch No.14101CD was supplied in the State of Chhattisgarh through Amit Agency and Kavita Pharma. After the incident, the medicine, which was recovered from the patients, were sent for chemical analysis to the following firms :-
 - i). National Institute of Immunology, Aruna Marg, New Delhi.
 - ii). Qualichem Laboratories, Nagpur.
 - iii). Shri Ram Institute for Industrial, New Delhi.
 - iv). Apollo Hospital, Bilaspur
6. It is further case of the prosecution that on 24.01.2015, the office of the HOD, Department of Pharmacology, Pt. J.N.M. Medical College, Raipur opined that the sample tablet of Ciprocin 500 have shown contamination of Zinc/Aluminum and Phosphide, which are used as pesticide as Rat poison, beside the metal like Lead, Arsenic, Cadmium, Mercury, Zinc, Iron, Manganese are also present in the tablet, which is harmful to the human being and were fatal. The test report, carried on the animals shows that 2000 mg or 500 mg per animal of standard Ciprofloxacin did not have any abnormal effect on experimental animal, whereas Ciprocin-500, which was given to the patients caused death within

24 hours on the animals and Ibuprofen 400 mg also shows on the test on the animals, one animal died out of five.

7. Food and Drug Administration, Raipur (C.G.) carried out the inspection immediately in the premises of the applicant's company and on inspection it was found that the product, which was supplied were not manufactured at the company of the applicant. It was found that the different checks and the entries in the register and the books about stock and other items, were missing. On enquiry, It was further found that the applicant had actively participated in the affairs of the company being the Director along with his father and as such is directly responsible for the cause.
8. Shri B.P. Sharma, learned counsel appearing on behalf of the applicant in M.Cr.C.No.4186/2015 would submit that the case is pending before the CJM and the primary witness Tripti Jain was examined on 13.07.2015 and would submit that after going through the statement, the contradictory statements have come on record. It is stated that at one point of time, it has been deposed that the Company has not manufactured the Tablet. But at the same time it is stated that the tablets were found there as per the register and the raw-material register also corroborated the same. It is further stated that reading of the evidence would show that categorical averments have been made that since the witness Tripti Jain, Drug Inspector, was instructed to lodge the report by the higher officials and for that reason only, the report was lodged or otherwise, no compliant would have been made. It is, therefore, stated that in such

circumstances on analysing the statement, it would show that no offence is made out. The counsel therefore would submit that the applicant is liable to be enlarged on bail.

9. Likewise in M.Cr.C.No.4224/2015, learned counsel submits that the entire case of the prosecution is based on the averments that Ciprocin tablet was containing poison of rat killer which is based on the report of the National Institute of Immunology. It is submitted that when the petitioner had obtained the particulars of such test report under the RTI Act, it was informed by the institution that the test was not carried out by the institution, but was carried out by Dr. Pramod Upadhyay in his personal capacity. It is submitted that thereby the institute has not undertaken to evaluate the correctness of medicine. In the result, it is stated that in order to shield the real culprits, the Government in haste has obtained the report which has no legal sanctity to continue prosecution. It is further contended that for filing such false report, a criminal complaint has also been filed by the applicant against the officers of the State. It was, therefore, contended that the applicant may be released on bail.
10. On the contrary learned State Counsel opposes the bail applications and submits that the evidence adduced by the witness in the midst of trial cannot be appreciated by the Court for the purpose of grant of bail. He further submits that the trial is going on and therefore if the applicant is released, the conduct of the counter attack would lead to

show that there will be likelihood of tampering evidence and therefore he may not be released on bail.

11. I have heard learned counsel for the parties at length.
12. Perused the earlier order dated 07.04.2015. This fact is not in dispute that after the operation and consumption of medicines 13 deaths of women patients took place. The charge sheet also contain the report of the chemical analysis which fortifies the fact of contaminated drug in the medicine i.e., poison which is normally used as rat killer zinc/aluminum phosphate. For the purpose of bail, the earlier rejection of the bail order dated 07.04.2015 was perused wherein discussion was made in detail. No challenge was made to such rejection order but these repeat bail petitions are made. While refusing the earlier bail petition, the court has taken into the aspect the nature and gravity of charge considering the fact that 13 deaths took place. Therefore, prima facie, no reasonable ground exists to believe that the accused had not committed offence. Taking into the available evidence, the severity of the punishment in the event of conviction looms large. Further with the fact that the applicant has filed counter compliant to establish the fact that the report of the National Institute of Immunology has not been issued by the institute instead the test was done by one of the Scientists in his personal capacity do not provide or substantiate a road to challenge that the entire prosecution is fake. The mere fact that the complaint having been filed by the applicant against the officers goes to show that the accused

is not leaving any stone unturned and has also counter attacked the prosecution which otherwise shows the position and standing of the applicant in the Society, therefore, in the light of observations made in the earlier order that there is likelihood of tampering the witnesses and the same cannot be ruled out.

13. Further more, by picking up one of the statements of witnesses also do not go to show that the applicant can be certified to be innocent. More over, appreciation of one of the statement of witness at the time of bail is also uncalled for without the trial being concluded. Further, it would not be proper to conclusively hold that since the National Institute of Immunology, in reply to RTI has stated that the institute has not officially conducted the test of medicine, therefore, the report cannot be completely accepted. It is for the prosecution to conclusively bring home of presence of rat killer in medicine and the same has to be appreciated with other evidence on record by the trial Court. Therefore, this Court is of the opinion that from the date of dismissal of the earlier bail petition i.e., 07.04.2015, the applicant is not able to show any material substantial change to reconsider the bail petitions again on merits.
14. Further the conclusive finding in regard to the points urged by the applicant is not expected of the Court considering a bail application. Therefore, picking up few lines of one of the witnesses and discussing the merits and demerits of the case would amount to detailed examination of evidence and elaborate documentation on merits of the case, which

cannot be done by deciding the case of bail. Further, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Therefore, this Court will not indulge in critical analysis of the evidence on record.

15. In view of the foregoing discussion, I am not inclined to release the applicant on bail. Consequently, both the repeat bail applications - M.Cr.C.No.4186/2015 & MCr.C.No. 4224/ 2015 stand dismissed.

Sd/-
GOUTAM BHADURI
JUDGE