IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1054 OF 2016

1 Mr. Sudhir Singh
2 Ms. Priyanka Singh ... **Applicants**
V/s.
1 The State of Maharashtra
2 Emcure Pharmaceutical Ltd. ... **Respondents**

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Mr. Shirish Gupte Senior Advocate with Mr. Aditya Parulekar with Rebbeca Dias, V.K.Bajpayi i/by Maharashtra Legal Associates , Advocates for the Applicants.
Smt. Rutuja Ambekar, APP for the Respondent/State.
Mr. Harsh Buch with Vikram Kamath i/by ALMT Legal for Intervenor.

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CORAM : N.W.SAMBRE, J.

DATED : 2nd December, 2016.

P.C.

1 The Applicants are seeking pre-arrest bail in Crime No.150 of 2016 for the offence punishable under Sections 420, 464, 465, 468 read with Section 34of IPC, Sections 103 and 104 of the Trade Marks Act, 1999 and Section 13(3)(a) of the Drugs and Cosmetics Act, 1940. It is claimed that offence took place in between December 24, 2015 and 18th February, 2016. Prosecution story as appears is one Bristol Multinational Company was getting manufactured certain drugs, one of which was Bicnu from Emcure Pharmaceutical Ltd., Pune. The rights of manufacture and marketing of Bicnu along with other drugs was thereafter purchased by Emcure Pharmaceutical Ltd. . The Emcure

Pharmaceuticals was also manufacturing and marketing its carmustine drugs for domestic consumption.

2 The accused persons are directors of Taj Pharmaceuticals, which claims to have secured said drug Bicnu for marketing in domestic market, tamper with its batch numbers and other details and without any authority exported the same to Raz Pharmaceuticals, Israel. It is claimed that while doing so there was tampering with export documents including that of invoices wherein signature of Preventive Officer and stamp thereof were forged.

3 The export without authority came to be discovered pursuant to call received from Raza Pharmaceuticals resulting in lodging of offence and registration of crime.

4 In the above referred background, Mr. Gupte the learned Senior Counsel for the Applicants while trying to make out case for grant of bail would invite my attention to the consent order passed in Suit (L) No.230 of 2016 initiated by Emcure Pharmaceuticals Limited v. Taj Pharmaceuticals Limited of which applicants are directors. According to him, the issue in relation to the crime in question has already stood settled in between the manufacturer and the applicants as could be apparent from the contents of the Consent Terms pursuant to which Court has already passed decree on 21.4.2016. According to him, what is disputed is the use of trade-mark for which remedy (civil in nature) is very much available. It is also claimed that applicants are an established company in the Indian market of manufacturing of

pharmaceutical products and as such, their non-availability or running away from investigation is not a possibility. It is then claimed that the applicants are as such entitled for protection as they have deep roots in the society and enjoys goodwill.

5 Per contra, the learned APP submits that investigation as is carried out till date reflects non-co-operation on the part of applicants. It is claimed that addresses and the other details which are provided by the applicants when check, were found to be bogus and as such, applicants have tried to mislead and misdirect the investigation. She would then submit that there is tampering at the behest of the applicants of the available material including that of computers, hard disc. It is also claimed that the applicant no.1 with criminal mind is carrying two identities in the field one by name Sudhir Singh and another by name Rajiv Bhatia. The learned APP assisted by the learned counsel for complainant then submits that the settlement in the civil suit is not taken to its logical ends as applicants herein have continued with their activities.

6 What could be inferred from the investigation papers is very conduct of the applicants of exporting pharmaceutical products without any authority that too after forging signature of preventive officer, Indian Customs on the invoices, applicants are the direct beneficiaries of serious illegal act. In a calculated manner, applicants have practised fraud by exporting drug without any authority and such act on the part of applicants have brought disrepute to entire pharmaceutical industries who are operating in Indian peninsula.

7 Prima-facie involvement of the applicants particularly in the matter of forging the invoices, tampering with the computers by replacing hard discs and the applicants impersonating other person could be inferred from the statements of the witnesses who happened to be employees of the applicants themselves. Strong criminal motive to commit crime is apparent.

8 What could be gathered from the investigation papers is fraud is practised by the applicants wherein there is direct involvement of the applicants in the crime in question.

9 In view of above, having regard to the serious nature of offence in which the applicants are involved, their criminal conduct and the motive to that effect brining disrepute to Indian pharmaceutical industries in international world and nature of offence being economic, in my opinion, serious view is required to be taken.

10 Application fails, Rejected.

(N.W.SAMBRE, J.)