

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 368 OF 2017

Tarun Kumar Shrivastava

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Mahesh Vishwakarma a/w Mr. Wastez Menezes
i/b Vishwakarma & Associates Advocate for the Applicant.
Mr. R. M. Pethe APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 28th FEBRUARY, 2017.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 672 of 2016 registered at Sakinaka police station on 20/12/2016 for offence punishable under sections 420, 120 (B) r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that on 20/12/2016, Tushar Bobhate lodged a report at the police station alleging therein that he is working as Senior Manager in Suventus Health Care Ltd. Applicant herein was working as General Manager in the Generic Divisions Department of the said

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Company. The work assigned to the applicant was that he had recommended the members of the sales team to the higher officers and on the basis of his recommendation, sales team was appointed. It was also his duty to do a market survey and recommend legible distributors for drugs, manufactured by the company and the senior officers would consider the recommendations and pass appropriate orders. It is alleged in the F.I.R. that in the year 2013, applicant herein had recommended one Ankur Mehta to be appointed as Sales Officer in-charge of Sales Division. It is a matter of record that Ankur Mehta was working with the applicant in the previous company i.e. In-swift Ltd. Based upon recommendation of the present applicant, Ankur Mehta was appointed as Regional Sales Officer and was posted and had office at Hissar, Haryana. He was in-charge of the sales division in Haryana. It is also alleged that the distribution of the drugs manufactured by the complainant company were given to Shivshakti Pharma and Sai Pharma at Hissar. In the regular audit, it was noticed that payments from both companies were due. The company had started persuading the said distributors and had initiated an inquiry. The employee Ankur Mehta, without giving any notice to the company had informed the applicant that he is resigning from the said post

and had discontinued his services. The notice was sent to Ankur Mehta and he had informed the company that based upon the suggestion of the applicant, distribution work was given to his maternal uncle Mr. Jotikumar.

3) It is clear that both firms were being run by Proxy by the applicant as well as Ankur Mehta. Upon further inquiry, the company had learnt that the applicant was demanding gratifications from the distributors, if they wanted to continue the distribution of the said generic drugs. The company received complaints from several distributors. It was also noticed that the applicant had received cheques from Sai Medical Warangal and the said amount was deposited in the personal account of the applicant. Some of the amounts were also received and were deposited in the account of the wife of the applicant and the payments from Sai Pharma and Shiv Shakti Pharma could not be recovered. The company suspected that the applicant in connivance with Ankur Mehta had cheated the company and therefore, the company was constrained to lodge a report.

4) In the course of investigation, it was revealed that the applicant had placed purchase orders by E-mail to the distribution department. One of the purchase order is dated 30/04/2015. The order was placed by the applicant is

as follows:

“Please bill 76,000 strips GEST APRO to M/s Sai Hansi”.

5) Distribution department had accepted the purchase order as they had full faith in the present applicant. Papers of investigation reveal that on 31/07/2014 also, applicant placed purchase order as follows:

“Please bill 63,490 strips GEST APRO to M/s. Shivshakti Hissar at Rs. 52/- and confirm”.

6) The company had dispatched goods. It is a matter of record that some of the medicines were returned to the company belatedly. As far as the amount deposited in the account of the applicant is concerned, the learned counsel for the applicant submits that it was a hand loan which he had taken from Sai Pharma. A part of which has been repaid.

7) In fact, the principal allegation is that Sai Pharma and Shivshakti Pharma were being run by proxy.

8) The learned counsel for the applicant submits that applicant was responsible for elating the sales of the company and only because there was some anomaly in the purchase price of a similar drug, the sales had fallen, the target could not be achieved and therefore, the company has initiated

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prosecution against the applicant.

9) The learned APP submits that in fact, the company would not be interested in losing an efficient officer and it cannot be said that applicant has falsely implicated. The custodial interrogation of the applicant would be imperative only to find out as to whether the drugs have been circulated, distributed and sold by using illegal methods. The company had received several complaints from distributors. The bank account of the applicant would clearly reflect that he had received amounts of Rs. 98,000/- from Warangal. The learned counsel for the applicant submits that it was a hand loan as the applicant was to pay a deposit of Rs. 1.5 lacs as security deposit to his landlord. It is clear that the applicant was placing purchase orders on behalf of Sai Pharma and Shivshakti Pharma and the bill have not been paid as it simply appears that there is some understanding between the applicant and two alleged stockists.

10) The case is concerning the sales and distribution of contraceptives. Any illegality in distribution of generic drugs would affect the society at large and in view of this, this Court is not inclined to protect the applicant by way of anticipatory bail. However, in the eventuality that the applicant is arrested or

surrenders before the concerned Magistrate, the learned Magistrate shall decide the application on its own merits, without being influenced by the observations made by this Court as the said observations are restricted to application under section 438 of Code of Criminal Procedure, 1973 only.

11) Application stands rejected.

(SMT. SADHANA S. JADHAV, J.)