

**` IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 517 OF 2019

Mrs. Vanita Nikshit Lunia & Anr. ... Applicants.

V/s.

The State of Maharashtra ... Respondent.

Mr. Rajendra Shirodkar, Advocate, a/w. Nihar Ghag & Rajiv Hingu I/by L. H. Hingu & Co. for the Applicants.

Mrs. G. P. Mulekar, APP for the State.
(Mr. Pramod A. Gawade, API, Byculla Police Station, is present)

CORAM : PRAKASH D. NAIK, J.

DATE : FEBRUARY 28, 2019.

PC :

1 This is an application for anticipatory bail in connection with CR No. 44 of 2019, registered with Byculla Police Station, Mumbai, for the offence under sections 420, 463, 464, 465 read with section 34 of the Indian Penal Code and sections 18(a), (b) & (c) with rules 65 and 104 A of the Drugs and Cosmetics Act, 1940.

2 First information report was lodged on 11.02.2019. The case of the prosecution is that the batch of the drugs namely, Tab. Galvus 50mg, which was not meant for sale in the

open market and to be supplied to the government institutions, defence and hospitals, were sold in market and purchased by the accused. The endorsement - E.S.I. supply “not for sale”, which was pasted on the cartons containing the drugs was removed and the same were sold in market.

3 The applicants had preferred application for anticipatory bail before Sessions Court, which was rejected by order dated 18.02.2019.

4 The learned counsel for the applicants submit that the offence committed under the Drugs and Cosmetics Act, is bailable in nature and that the offence under section 420 of the Indian Penal Code, is not made out. It is further submitted that the applicants are conducting business through M/s. Nivaan Pharmaceuticals, who had purchased the medicines from M/s. Shri Samarth Distributors, Sanpada. It is submitted that the sale was genuine, which was reflected in the tax invoices. The applicants could not suspect the genuineness of the said drugs before purchase. It is submitted that the endorsement “not for sale” was not existing on the cartons when the drugs were sold to applicants. The entire payment towards purchase was made to Ms/ Shri Samarth Distributors. It is submitted that enquiry were made by the investigating machinery and that applicants have co-operated with the investigation and furnished all the requisite

documents to them. It is submitted that the applicants are willing to co-operate with the investigation. They had no knowledge that the sale of such drugs is allowed in the open market or that said batch was made for specified concern. The entire stock has been seized.

5 The learned APP submits that the accused have indulged in purchase of the drugs which were not available for sale in the open market. The offence is of serious nature. Source of the drug is required to be investigated. It is submitted that the M/s. Shri Samarth Distributors were not authorized distributors of the said drugs and the authorized distributors were M/s. Novartis, having its office at BKC. However, the applicant had purchased medicines from M/s. Shri Samarth Distributors having their office at Sanpada. It is further submitted that the statements of the main distributors were recorded in which they have stated that batches made for defence or government institutions were being sold. It is submitted that the offence is of serious nature and custodial interrogation of the applicant is necessary. It is submitted that the applicant no.2 is a competent person under the FDA rules and he was expected to be vigilant while purchasing the batch of the drugs. It is submitted that the cartons in which the distributed drugs were packed indicates that the endorsement "Not for sale" has

been removed which is visible and the applicant no. 2 could not have noticed it.

6 Having heard both sides, I have perused the documents on record. As narrated herein above, the disputing batch of drugs were meant for sale to the specified concerns and not for sale in the open market. Applicant no.1 is the wife of Applicant no. 2. The applicant no. 2 is the competent person within the provisions of the FDA Rules and he was supposed to be vigilant and cautious while purchasing the drugs. It is difficult to believe that he had no reason to suspect genuineness of sale. The proprietor of M/s. Shri Samarth Distributors had preferred anticipatory bail application no. 464 of 2019 before this court, which was withdrawn as the court was not inclined to grant the relief prayed for in the said application.

7 In the aforesaid circumstances, the investigating machinery is required to conduct thorough investigation. However, applicant no. 1 is the wife of applicant no. 2 and the applicant no. 2 is competent person within the provisions of the law.

8 Considering the circumstances, the applicant no. 1 can be protected on condition to co-operate with the

investigation. However, the application of applicant no. 2 deserves to be rejected. Hence, I pass following order :

ORDER

- i. Anticipatory Bail Application No. 517 of 2019 is partly allowed.
- ii. The application for anticipatory bail on behalf of the Applicant No.2 - Mr. Nikshit Hemant Lunia is rejected.
- iii. Application of Applicant No.1 - Mrs. Vanita Nikshit Lunia is allowed. In the event of arrest of Applicant No.1 in connection with CR No. 44 of 2019, registered with Byculla Police Station, Mumbai, said applicant be released on bail on furnishing PR Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- iv. Applicant No. 1 shall report the investigation officer on 5th and 6th March, 2019 between 11 a.m. to 1 p.m. and thereafter, as and when called for by the officer.

Application is disposed off.

(PRAKASH D. NAIK, J.)

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