

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

**ANTICIPATORY BAIL APPLICATION NO.1058 OF 2019
WITH
ANTICIPATORY BAIL APPLICATION NO.1150 OF 2019
(Not on Board)**

Sanjay Fattechand Garg

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

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Mr.Dinesh Kadam & Siddhant Dhadavle, Advocate for
Applicant in both matters.

Mr.R.M. Pethe, A.P.P. for the State-Respondent.

PI. G.R. Kshirsagar, Byculla Police Station, present.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 17th SEPTEMBER, 2021**

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PC.

1. The applicant in both these applications are seeking pre-arrest bail in connection with C.R. No.44 of 2019 registered with Byculla Police Station and C.R. No.30 of 2019 registered with Turbhe/Sanpada Police Station. In both the FIRs the offences were registered under Sections 18A, 18B, 18C of Drugs and Cosmetics Act, 1940 and Sections 420, 463, 464, 465 r/w 34 read with Section 34 of Indian Penal Code, 1860. The FIR vide C.R. No.44 of 2019 was registered on 11.02.2019 whereas, the FIR in C.R.No.30 of 2019 was registered on 27.02.2019.

2. The case of the prosecution is that information was received from Assistant Commissioner, Intelligence Bureau of Food and Drugs Administration, Government of Maharashtra, Mumbai that some of the medicines, which are imported, stocked and available for the Defence Department, Government Hospitals, ESIS, Institutional Supply, etc. were arrived for general market sale in local market after erasing the overprinting mentioning its usage on the Carton and Strips of the medicines. Information was also received that M/s.Nivan Pharmaceuticals, situated at Byculla, was selling the medicine illegally in open market. On 30.01.2019, the first informant and others searched the premises of M/s. Nivan Pharmaceuticals. The stock was checked and it was noticed that there was deletion/erasing cartons/boxes of Galvus 50 mg Tablets Batch Nos. BY332, BAR92, BCA46, BED43 and Lantus Soloster Batch No.8FS527B and Arcalion Batch No.11808. Samples of three medicines sent for forensic report and the rest of the medicines were seized. On 01.02.2019, permission was granted by the Court to the Food & Drug Administration to keep the seized medicines in safe condition. Medicine was imported from Spain by M/s. Novartis Healthcare Pvt. Ltd. situated at Bhivandi. The premises of importer was searched and inquiry was conducted. On 05.02.2019, the importer M/s. Serdia Pharmaceuticals (India) Pvt. Ltd. was questioned by the search team and sample of medicine viz. Arcalion Tablets was seized. Inquiry was also made with S.K. Logistics and their opinions were taken for

bringing more clarity on the subject. It was admitted that words of overprinting, which mentions that the medicines are for use of Defence, ESIS, Institution Supply, Government Supply, etc. were erased on the samples provided by the Food & Drug Administration. In the inquiry with Nivan Pharmaceuticals, it was revealed that the medicines Galvus 50 mg was purchased from M/s. Samarth Distributors. Accusation was made against the Vinita Nikshit Lunia and others for selling the medicines for general public. Investigation proceeded. During the course of investigation, it was revealed that medicines were distributed by the applicant/accused.

3. The allegations spelt out in respect to C.R. No.30 of 2019 registered with Turbhe/Sanpada Police Station which is subject matter of Anticipatory Bail Application No.1150 of 2019. On receipt of the information, the Food & Drugs Administration made inquiry. During the course of inquiry, it was revealed that M/s. Samarth Distributors was involved in purchase and sale of Galves 50 mg Tablet having Batch No. BY332, BAR92, BAC46, BED43, BAR88, BCA47, BCK66, BV977, BY330, BX599, BU918, BV978, BV981, BDL44, BX534, BY333, BAR87 and other batch numbers. Inquiry was conducted with M/s. Vishal Pharmaceuticals and others. Stock of Zipod 100 DT Tablets was found. Other medicines were also found. The medicine Galves was imported by M/s. Novartis Healthcare Pvt. Ltd. It was not available for general sale. M/s. Samarth

Distributors have furnished the record of sale to the Food & Drug Department. M/s. Novartis Healthcare Pvt.Ltd. had clarified that batch numbers of the certain medicine which were categorized for sale to specified person. The FIR is registered and investigation proceeded. The complainant had approached Turbhe/Sanpada Police Station. The FIR was registered vide C.R. No.30 of 2019.

4. The applicant preferred applications for anticipatory bail apprehending arrest in connection with aforesaid FIRs. The applications were rejected by order dated 18.04.2019 and 10.05.2019.

5. While rejecting the application in connection with C.R. No.44 of 2019 learned Sessions Judge had observed that the applicant is distributor of medicines. Offence is affecting public at large. It is serious offence. Custodial interrogation of the applicant is required. Whereas, while rejecting the application for Anticipatory Bail in respect of C.R. No.30 of 2019, it was observed by the learned Sessions Judge that the facts and circumstances of the case are serious. Investigation is required to be conducted. Medicine which was not for sale and only for use of Government has been sold out by the accused.

6. Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. Custodial

interrogation of the applicant is not necessary. The applicant was arrested in C.R. No.31 of 2019 in which he was granted bail. All the FIRs are interlinked. The investigation is similar. While the applicant is in custody in connection with C.No.31 of 2019, he was interrogated and hence the present FIRs which are identical and there is common thread of investigation. The applicant is not required to be subjected to custodial interrogation. He relied upon the order granting bail to the applicant in C.R. No. 31 of 2019. It is submitted that some of the medicines which were subject matter of C.R. No.31.2019 are also considered in C.R. No.30 of 2019 and C.R. No.44 of 2019. The investigation is going on since last about 2 years. Registration of more than one FIR in respect of the some of the transactions is bad in law. The reliance is placed on the decision of Supreme Court in the case of Surender Kaushik & Ors Vs. State of Uttar Pradesh (2013) 5 SCC 148. It is submitted that in the said decision it is observed that for similar transaction repeated FIR cannot be registered.

7. Learned APP submitted that offence is of serious nature. Although the FIRs were registered in 2019, on account of the interim protection being granted to the applicant, investigation could not be conducted effectively. Custodial interrogation of the applicant is necessary. The submission of the learned counsel for the applicant submitted that there cannot be multiple FIRs cannot be accepted. There are three FIRs in respect of different

transactions. This is an application for anticipatory bail and not quashing the proceedings. He relied upon the statements of the witnesses recorded during the course of investigation and documents relating to the seizure of medicine. Statements of witnesses working for SK Logistic, Novelties Healthcare Pvt. Ltd. and other were recorded. It is submitted that the medicines were for Defence, ESIS, Government specified Institution. The accused were involved in erasing the label specifying restricted sale and the medicine were distributed in the market for sale general public. There is big racket. Thorough investigation is required to be conducted. Merely on the ground that accused was arrested in C.R. No.31 of 2019, it cannot be said that his custodial interrogation is not necessary. In the present C.R. there is evidence to show that the applicant is a source from whom the medicines were generated in the market. He was a distributor. Only the applicant will be in a position to disclose as to how the offence is committed and the medicines were distributed in the market.

8. I have perused the FIRs and investigation papers. In the light of overt act attributed to the applicant, the relief under section 438 of Cr.P.C. cannot be granted. The aforesaid medicine was distributed in the market by erasing the label because of which the applicant was arrested in C.R. No.31 of 2019 and after few days he was granted bail. C.R. No.30 of 2019 and C.R.No.44 of 2019 were registered with different police

stations. The first in point of time is C.R. No. 30 of 2019 registered with Santacruz Police Station. It is pertinent to note that, most of the medicines, which are batch of medicine are subject matter of all the three FIRs are different. The evidence on record, prima facie, disclosed that the applicant was concerned with the distribution of the medicine. The evidence revealed that label containing the restricted sale were erased and the medicine was made available for general public. In the light of the role assigned to the applicant, his custodial interrogation is necessary. The submission that there are multiple FIRs cannot be accepted in the present proceedings. Transactions were different.

9. In view of aforesaid circumstances, no case for grant of anticipatory bail is made out.

ORDER

- (i) Anticipatory Bail Application Nos.1058 of 2019 and 1150 of 2019 stand rejected and disposed of.

(PRAKASH D. NAIK, J.)

At this stage, learned counsel for the applicant submits that interim protection was running in favour of the applicant for long time and the applicant proposes to challenge this order

before the Apex Court. Hence, protection may be continued for three weeks. Interim protection shall continue for a period of three weeks from the date of uploading this order.

(PRAKASH D. NAIK, J.)