IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1222 OF 2019

Shanti Rajesh Iyer … Applicant
V/s.
The State of Maharashtra … Respondent

Shri Nilesh Tribhuvan a/w Ms. Kanan Chawda and Mr. Saakshat Relekar i/b. White & Brief Advocates & Solicitor for Applicant.
Mr. Y. M. Nakhwa, A.P.P. for Respondent-State.
Mr. Suraj Jadhav, PSI, Rabale M.I.D.C. Police Station, Navi Mumbai is present.

CORAM : A.S. GADKARI, J.
DATE : 20th November, 2021.

P.C. :

1. This is an application under Section 438 of the Criminal Procedure Code for pre-arrest bail in C.R. No.288 of 2018, dated, 19th September, 2018, registered with Rabale M.I.D.C. Police Station, Navi Mumbai for the alleged offence under Sections 463, 464, 468, 420 and 120B of the Indian Penal Code

2. Heard Mr. Tribnuvan, learned counsel for the Applicant and Mr.Nakhwa, learned A.P.P. for the Respondent-State. Perused record of investigation.

3. The First Information Report is lodged by Mr. Ajay M. Mahule,

Medicine Inspector, Foods and Drugs Administration (Maharashtra State). It is the prosecution case that, the Officers of Foods and Drugs Administration received confidential information that M/s.Flamingo Pharmaceuticals Limited, Navi Mumbai has manufactured/created bogus renewal copy of Form No.26 and pasted the address of Food and Medical Administration (Maharashtra State), Thane on it and also forged signature of Assistant Commissioner and Licence Officer Shri V. T. Ponicker. That, the said document was thereafter used for exporting medicines manufactured by M/s.Flamingo Pharmaceuticals Limited to various countries in the world. The informant along with other Officers visited the company on 2nd August, 2018 and conducted inquiry thereof. At that time, the Applicant and co-accused Rajesh Rajaram showed the Drugs Inspector duplicate medicine certificate and admitted that they prepared the said document and exported medicines in various countries i.e. Philipines, Vietnam, Haity etc. by taking advantage of the said document. It is the further case of prosecution that, by use of the said fake and/or forged document, the company exported various goods and also committed an act of cheating with Customs Department and other Government Officials. In this brief premise, the present crime is registered.

4. Mr. Tribhuvan, learned counsel for the Applicant submitted that, by a Notification dated 27th October 2017, the Ministry of Health and Family Welfare has waived the condition of having Form No.26 in its physical form.

That, Clause No.3 of the said notification, omitted the word 'or renew' and what was made permissible is licence retention fees towards the manufacturing licence for five years and therefore there was no question of manufacturing, preparing and/or forging the document, namely, form No.26 in that behalf. By placing reliance on a communication dated 4th November, 2017 addressed by the Chairman of Confederation of Indian Pharmaceutical Industry (SSI) (Regd.), which was addressed to all its members and Pharmaceutical Manufacturers, wherein the said fact has been reiterated and submitted that, there was no need to Applicant to manufacture the said document. He submitted that, the applicant denied that she had any role in preparing the said bogus/forged document, as there was no need for the company to produce it before any Authority. He submitted that, there are three other accused persons in the present crime and the said three other accused persons have framed the Applicant and has foisted the liability of manufacturing of the said document on her. He submitted that, after grant of interim relief, the Applicant on various occasions has attended the Investigating Officer and cooperated with the process of the investigation. He submitted that, the Applicant is a women aged about 50 years and therefore, she may be protected by way of pre-arrest bail by allowing the present Application.

5. Perusal of record of investigation indicates that, by use of the said Form No.26, M/s.Flamingo Pharmaceuticals Limited has in fact exported its pharmaceutical items to the various countries, namely, Vietnam, Haiti, Madagascar and Phillipines etc., as the Drug Authorities of the said countries were insisting for Form No.26 for exporting goods from the M/s.Flamingo Pharmaceuticals Limited. In a statement given to the Joint Commissioner of the Foods and Drugs Administration on 3rd August 2018, the Applicant has admitted that Form No.26 was submitted on demand by the Drugs Authorities of the said four countries, otherwise they were not accepting the delivery of goods supplied by the M/s.Flamingo Pharmaceuticals Limited. It appears that, all the accused persons in connivance with each other has manufactured and/ or fabricated the said document for exporting the pharmaceutical goods of M/ s.Flamingo Pharmaceuticals Limited.

Record further indicates that, the Applicant was well aware of the fact that, Form No.26 was no more in existence since 27th October, 2017 and despite the said fact the said fabricated Form No.26 was subsequently prepared and forwarded to the said four countries.

6. After perusing entire record, it prima facie appears that, the Applicant in connivance with other accused persons has prepared the said forged document and also fabricated stamp of the concerned Officer of Foods and Drugs administration of the Maharashtra. It further appears that, the

signature of Assistant Commissioner of Foods and Drugs Administration, Shri V. T. Ponickar has also been forged and/or printed on the said document.

7. The investigation of the present crime could not be taken to its logical end for want of custodial interrogation of the Applicant. As far as the contention of the learned counsel for the Applicant that, the Applicant has attended the Investigating Officer on various dates, after grant of interim relief is concerned, a useful reference at this stage can be made to the decision of the Hon'ble Supreme Court in the case of *State Rep. by the C.B.I. Vs. Anil Sharma***,** reported in *(1997) 7 SCC 187,* wherein the Hon'ble Supreme Court has held that, the custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

In view thereof, even though the Applicant had attended the Investigating Officer on the stipulated dates under the directions of this Court, it is of no avail for the purpose of investigation. The Investigating Officer is yet to thoroughly interrogate the Applicant to unearth entire truth behind the crime and her exact role in it.

8. After taking into consideration the gravity of offence and the role played by the Applicant in the present crime, this Court is of the view that, the Applicant does not deserve to be protected by pre-arrest bail.

Application is accordingly rejected.

9. At this stage, the learned counsel for the Applicant submitted that, the effect and operation of the present Order may be stayed for a period of three weeks from today to enable Applicant to challenge the present Order before the Hon'ble Supreme Court.

In view thereof and at his request, the effect, operation and implementation of the present Order be stayed for a period of three weeks from today.

[A.S. GADKARI, J.]

MANOJ R TANDALE Digitally signed by MANOJ R TANDALE Date: 2021.11.27 14:35:39 +0530