<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>
<u>BENCH AT AURANGABAD</u>

ANTICIPATORY BAIL APPLICATION NO.1157 OF 2022

Nitin s/o. Jagannath Bothe,
Age 42 years, Occu. Business,
R/o. Pankaj Colony, Shivnery Bungalow,
T. V. Center Area, Savedi, Ahmednagar,
District Ahmednagar. .. Applicant
(original accused)

Versus

The State of Maharashtra
Through its Investigation Officer,
M.I.D.C. Police Station, Ahmednagar,
Taluka and District Ahmednagar. .. Respondent

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Mr. N. B. Narwade, Advocate for Applicant;
Mr. S. B. Narwade, A.P.P. for Respondent/State

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CORAM : S. G. MEHARE, J.

DATE : 21-09-2022

P.C. :-

1. Heard the learned Advocate for the applicant and the learned A.P.P. for the respondent/State.

2. The first information report has been registered against the applicant for the offence punishable under Section 18(a), 18(c), 22, 27, 28 of the Drugs and Cosmetics Act, 1940 (for short, “the Act”) and Sections 420, 468, 471 read with Section 34 of the Indian Penal Code (for short, “I.P.C.”).

3. It has been alleged in the first information report that the secret information was received to the office of Assistant Commissioner, Food and Drugs Administration, Government of Maharashtra, that abortion pills have been brought in the transporter's warehouse of V.R.L. Logistic at M.I.D.C. Ahmednagar; hence, the officers from the department of Food and Drugs visited and inspected the warehouse. The person Rameshsingh Thakur told them that they had received some medicines from Panchkula Haryana. The Drug Inspector opened those boxes and found 180x10x5 Tab (kit). He also told them that a tax invoice is also received in the said boxes. They inspected the tax invoice and found that it was addressed to Shriram Agency, Sawedi, Ahmedngar. Since they got suspicious, they collected samples from the boxes. They made an inquiry about Shriram Agency and found that the said firm does not work at the given address. He went there, and in further investigation, they found that the address of Shriram Agency given in the drug license was C.S.No.5916, in front of Gigabyte Internet Cafe, Anand Bazar, Patwardhan Chouk, Ahmednagar, and its owner was applicant Nitin. On further investigation, it was transpired that the said building was demolished long back, and there was no Shriram Agency. On inquiry, they learnt that the applicant was running an illegal business selling Avort-kit without a license. The applicant was called by written notice. Before that, it was transpired that the

applicant was running his business from his house situated at Shivneri Pankaj Colony, T. V. Center Area, Ahmednagar. The applicant admitted that he does the business of purchasing and sale of medicines from his house. He further admitted that invoice number ORA/22/23/0080 dated 28.04.2022 of I.V.A. Health Care Pvt. Panchkula, Haryana, is his. However, he got a suspicion that there may be a big racket of black marketing of Avort-kit used for termination of pregnancy. The applicant was not supporting the Drug Officer. The said drug was harmful to health. Therefore, the crime was registered.

4. Mr. Narwade, the learned counsel for the applicant, has vehemently argued that the applicant has no concern with the said medicines. The alleged medicines have been recovered from the premises of the applicant. Therefore, he cannot be held liable for prosecution. The applicant admitted that he demanded the medicine mentioned in the invoice. However, some different drugs appeared to have been dispatched and received by V.R.L. Logistics. Section 18(a) of the Act is not a substantive offence. Under Section 27(B)(2), it is punishable with not less than three years and up to five years and fine up to Rs.1,00,000/- and three times the value of the drug seized. The offence is non-cognizable. Hence, no direct first information report is permissible, and the prosecution can only be lodged after following the procedure as prescribed under Section 154 of the Code of Criminal Procedure

(“Cr.P.C”, for short). He relied on case law laid down in the case of ***Arjun s/o. Maruti Magar Versus the State of Maharashtra and another (Criminal Writ Petition No. 1371 of 2017, dated 12.06.2020)***. It is also argued that after lodging the first information report, the Food and Drugs Department issued a notice under Section 18(a) of the Act to the applicant, which is requisite and a mandate for lodging the private prosecution. The requisite procedure has not been followed. Therefore, the first information report is premature. None of the sections can be applied in the present case. There is no question about applying Sections 420, 468, and 470 of the I.P.C. The address of his agency was correct, but the owner had demolished the building where shop was situated, and hence, the applicant shifted his business to his residential house just in front of the said building. The allegations that the applicant was operating his business from the house are baseless. He never accepted the said fact. The muddemal has already been seized, and it is with the Investigating Agency. Therefore, the custodial interrogation of the applicant is not essential. The arguments of the learned counsel for the applicant are that the applicant visited the Police Station on many occasions, from *interim* protection granted by the learned Sessions Court. His statement was also recorded. He has also argued that the applicant used to order medicines to the company on the telephone to a person Amar Singh working in the sister concern of

Eye Health Private Limited, Panchkula, Haryana and argued that it had been transpired that at no point in time, the applicant had placed the order for said drug.

5. The learned APP has argued that it has been transpired in the investigation that a person, namely Amar Singh had dispatched the medicine-in-question to the applicant. During the relevant period, there were about fifteen calls made by the applicant to said Amar Singh. Amar Singh and the applicant has a connection about sending and receiving drugs without any order. He would argue that the applicant did not produce the documents of the order placed to the said company. Therefore, his license has been cancelled. He has also argued that Section 36-AC of the Act provides that an opportunity to oppose the application for bail should be given to the Public Prosecutor before releasing the accused on bail. The Court, after being given the opportunity by the Public Prosecutor, the Court has to satisfy that there are reasonable grounds for believing that the accused is not guilty of such an offence. If the Court is satisfied that there were reasonable grounds to believe that the applicant/ accused is not guilty of the offence, then and then only the Court can grant bail. He has also argued that as per Section 22 of the Act, refusing to produce any record, register, or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has

reason to believe that an offence under this Chapter has been, or is being, committed, is also offence punishable with imprisonment which may extend to three years or with fine or with both. He referred to Section 32 of the Act and would point out that it pertains to the person who may institute the prosecution. The said Section does not include the procedure for filing the complaint by the Drugs Inspector, Food and Drugs Administration or other competent authority. Therefore, the police have correctly taken cognizance. Apart from the provisions of the Act, various Sections of the I.P.C., as stated above, have also been applied. The offence is serious. The applicant is involved in the illegal business of selling drugs harmful to the life of women. The investigation wants to know how the applicant does this business with Amar Singh. Hence, the custodial interrogation of the applicant is essential.

6. In the case of ***Arjun s/o. Maruti Magar*** *(supra),* the petitioner, had prayed for quashing and setting aside the F.I.R. for the offences punishable under Section 18(c), 18(a) (I), 17(b) and 17-A(b) of the Drugs and Cosmetics Act, 1940. Considering the facts of the case, the Hon’ble Division Bench of this Court has referred to the observations from the case of ***Rajendra Madhav Pate Vs. State of Maharashtra and another, 2017 All M.R. (Cri.) 199***, in paragraph No. 11, in which it has been observed as, the offence under section 27(b)(ii) of the Act being non-cognizable, the police machinery was not empowered to take cognizance

thereof and conduct the investigation, without the order of the Magistrate vide Section 155(2) of the Code of Criminal Procedure. Here in the case, the offences have been applied against the applicant under Sections 18(a), 18(c), 22, 27, and 28 of the Act. Section 36-AC of the Act has answered the question raised by the learned counsel for the applicant that the first information report cannot be directly registered. It has been observed therein that every offence relating to adulterated or spurious drugs and punishable under Clauses (a) and (c) of section 27, section 28, section 28-A, Section 28-B and sub-sections (1), (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be cognizable. Since the sections applied against the applicant are cognizable, with due respect to the Honourable Division Bench of this Court, the Court may say that the said case would not help the applicant.

7. So far as the principles laid down in the case ***Avinash Kumar Vs. State of Bihar [Criminal Miscellaneous No. 8900 of 2016 arising out of P.S. Case NO. 513 of 2015 Thana Sikarpl District, dated 02.03.2022]*** and ***Satender Kumar Antil Vs. Central Bureau of Investigation and another, 2022 S.C.C. OnLine SC 825***, is concerned, a clear law has been laid down that where the ground under Section 41-A and C of the Cr.P.C. is available, then the Investigating Officer has to pass an order in writing the reasons for not arresting such accused.

However, where the Investigating Officer is satisfied that the arrest of the accused is necessary, then he may arrest the accused even in the cases punishable for not less than seven years or up to seven years or with fine or both.

8. It has been vehemently argued by the learned A.P.P. that the offence is apparently serious and a danger to human life. The business carried out by the applicant was unauthorized. It is purely smuggling of prohibited drugs. The applicant failed to produce the order placed to the drug company of Haryana. There is every possibility to protect the person who indulged in such business.
After having gone through the papers produced by the applicant and relevant provisions of law, the Court is of the view that the applicant has no case for anticipatory bail. Hence, the application stands dismissed.

9. The learned counsel for the applicant prayed to continue interim protection for four weeks. In the interest of justice, interim protection will continue for four weeks.

(S. G. MEHARE.)
JUDGE

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