

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-1460-2023

Reserved on 07.02.2023

Pronounced on 02.06.2023

BHARAT KUMAR

... Petitioner

VS.

STATE OF PUNJAB & ANR.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. PS Dhaliwal, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J. (Oral)

The petitioner seeks anticipatory bail in Complaint No.COMA-17-2022 dated 19.04.2022 titled as “State through Drug Inspector vs. Ramesh Kumar & Ors.” filed under Section 18(a)(i) read with Section 17A & 17B punishable under Section 27(b)(i) and 27(c) of the Drug and Cosmetics Act, 1940 (in short, ‘the Drugs Act’) and the Rules of 1945, framed thereunder, which is pending in the Court of CJM, Barnala, wherein the petitioner has been summoned to face trial vide order dated 16.08.2022 (Annexure P2).

Learned counsel for the petitioner submits that in the complaint, it has been alleged that the sample in question of the drugs kept by the accused Ramesh Bansal for sale was found to be adulterated. The drug in question was manufactured by M/s. Organo Laboratories Chemicals Pvt Ltd., and the present petitioner is one of the Directors of said firm whereas the petitioner is quite innocent and has been falsely implicated in this case.

It is further submitted that petitioner, being the Director of the firm, has been summoned vide the impugned order dated 16.08.2022 by the Illaqa Magistrate to face trial in the complaint case filed by the complainant

i.e. Drug Inspector. He further argued that from a bare perusal of complaint, no offence punishable under the Drugs Act is made out against the petitioner. He further submitted that the petitioner has no concern with the day-to-day dealing of the said firm. Even otherwise, the complainant has not followed the mandatory procedure as provided under the Drugs Act and as such, the whole proceedings stands vitiated. He further submitted that since the petitioner has been summoned to face trial in the complaint case as such, the custodial interrogation of petitioner is not required. The conclusion of trial of complaint case will take time and that nothing is to be recovered from the petitioner who is ready to join the proceedings.

Learned counsel for the petitioner contended that no speaking order has been passed whether the offence under Section 18(a)(i) r/w 17A and 178 punishable under Section 27(b)(i) and 27(c) of the Drugs Act, 1940 and Rules 1945 is made out or not as no reason whatsoever has been given in the light of the fact that no recovery has been made from the possession of the petitioner. Moreover, since it is a complaint case, the petitioner is ready to appear before the trial court and face the trial as to whether or not the petitioner is responsible for the alleged sample taken from the shop of co-accused.

It is vehemently contended that neither any sample of allopathic drugs were taken or drawn nor any document alleged to be prepared by the complainant in the presence of the petitioner. No sealed parcel of 1.500 ML and sanitizers with aloe vera were taken into possession of the petitioner nor any receipt was ever supplied to the petitioner by the complainant. As it is alleged that all samples were made into parcel and sealed at the spot with seal

in the presence of Ramesh Kumar Bansal and no receipt was obtained. No inspection report was prepared in the presence of the petitioner.

Further, it is the contention of the learned counsel for the petitioner that in reply to the letter sent by the complainant to the petitioner-company, it was specifically disclosed that the petitioner-company is not the manufacturer of the hand sanitizer in question and the same has been purchased from M/s JS Industries, New Delhi and was not manufactured by the petitioner-company. It is submitted that the petitioner-company is the re-packers of Sodium Hydrochloride Handrub for sanitizing in hospitals. The petitioner has also placed on record the tax invoice (Annexure P5) to show that the sanitizer (isopropyl alcohol) was purchased from JS Industries. That being so, the petitioner or its firm cannot be said to be responsible for the alleged adulterated sanitizer which was taken into possession of Laksh Surgical and Medicos.

Learned counsel for the petitioner further contended that Section 34 of the Drugs Act provides that every person who was in charge of and responsible for the conduct of business, at the time of commission of an offence under the Drugs Act, is deemed guilty of the offence. *Proviso* to Section 34 of the Drugs Act enumerates that a person shall not be liable for punishment under the Drugs Act, if he proves that the offence was committed without his/her knowledge. It is further contended that the petitioner cannot be prosecuted since it must be proven that the offence under the Act has been committed with his consent and connivance. Further, no prior investigation was carried out as to who is responsible for the adulterated sanitizer in view of the fact that the petitioner being the Director cannot be only held liable for

adulteration as technical manpower is involved in the manufacture of such chemical solution.

Reliance has been placed on (i) **Pepsico India Holdings P.Ltd. vs. Food Inspector & Anr. (2011) 1 SCC 176**; (ii) **State of Haryana vs. Brij Lal Mittal (1998) 5 SCC 343**; (iii) **State of NCT of Delhi vs. Rajiv Khurana (2010) 11 SCC 469**; (iv) **M/s Pepsi Foods Ltd. vs. Special Judicial Magistrate (1998) 5 SCC 749** as well as the Karnataka High Court judgment in **Ritesh vs. The State of Karnataka 2011(25) RCR (Crl.) 354** to contends that the director of the company cannot be held responsible since the only assertion has been made in the complaint is that the petitioner has committed offence by manufacturing and selling the drugs that are not of standard quality, however, it is nowhere stated in the complaint as to the role of petitioners in either participating in the day to day affairs of the firm/company and as to his actual role in manufacturing the drugs in question. The Karnataka High Court referred to **State of NCT of Delhi Vs Rajiv Khurana 2011 (1) SCC (Crimes) 195** and held that:-

“...it is incumbent upon the complainant to state how a director who is sought to be proceeded as an accused was incharge of business of the company are responsible for the conduct of company's business and it has been further held that complainant has to aver in the complaint that accused was incharge and was responsible for the conduct of the business of the company. It has also been held averments made in the complaint should be clear and specific. The Hon'ble Supreme Court in Pepsico Holdings case referred to supra referring to the earlier judgments has held that directors who are Incharge of day to day affairs of the company are vicariously liable and a

mere bald statement that a person was the director of the company would not suffice and It was found on facts that a particular director had been nominated to be the person Incharge and responsible for the company for the conduct of Its business and he alone being responsible for day to day affairs, proceedings against others cannot be proceeded with and as such quashed the proceedings against the appellants therein.”

The starred contention raised by learned counsel for the petitioner is that in a complaint against a Company and its Directors, the complainant has to indicate in the complaint itself as to whether the Director(s) concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the company for the conduct of its business. Mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company.

Notice of motion.

On the asking of the Court, Mr. Rajiv Verma, DAG Punjab accepts notice. He contends that the petitioner was indulged in malpractice and making undue money by fraudulent means, even during the period of pandemic COVID-19, and at that time, the Disaster Management Act was in vogue. He countered the contention of the petitioner and argued that in case of offences committed by a company against society at large, the Director who has accrued benefit from such act ought to be held liable.

Learned State counsel further argued that principles of vicarious liability are not attracted in the present case as production of the Drugs is not

related to managing the affairs of the company. Given the nature of the offence, this is a case for strict liability and as such, the petitioner is not liable to be extended the concession, as sought for.

Mr. Rajiv Verma, learned DAG Punjab further averred that the offences and the offenders in the case of this nature are manufacturing and distribution of sub-standard drugs by a Company which is managed by its Board of Directors. The decision to manufacture the drugs is the collective decision of the Board of Directors. Therefore, the petitioner being the Director, cannot claim that he was not directly involved in the product of the drugs, when the decision to produce the drugs itself is the outcome of their decision. Therefore, the case of Director signing the cheque on behalf the Company and the case of Director participating in the decision to produce sub-standard drugs are not one and the same to hold that the petitioner is not involved in day-to-day affairs of the Company.

Heard learned counsel for the parties and gone through the case file and case-laws cited on behalf of the petitioner.

The Drugs and Cosmetics Act, 1940 came into force on 10.04.1940. It is an existing law when the Constitution came into force. In the year 1982 there was an amendment to this Act, the statement of Objects and Reasons for the said Amendment, explains the purpose of the Act as below:-

“Amendment Act 68 of 1982- Statement of Objects and Reasons:-

The Drugs and Cosmetics Act, 1940, regulates the import into, manufacture, distribution and sale of drugs and cosmetics in the country. The problems of adulteration of drugs and also of production of spurious and sub-standard drugs are posing

serious threat to the health of the community. It is, therefore considered necessary to amend the Drugs and Cosmetics, Act, so as to impose more stringent penalties on the anti-social elements indulging in the manufacture or sale of adulterated or spurious drugs or drugs not of standard quality which are likely to cause death or grievous hurt to the user. This opportunity is also being availed of to incorporate certain other provisions on the other aspects of effective control on the manufacture, distribution, sale of drugs and cosmetics on the basis of experience gained in the working of the Act.”

In the case in hand, the petitioner is sought to be prosecuted for the offence under Section 18(a)(i) read with Section 17A & 17B of the Drugs Act, which is punishable under Section 27(b)(i) and 27 (c) of the said Act. The same read as under:-

27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter. –

Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes]

(b) *any drug:*

(i) *deemed to be adulterated under section 17-A, but not being a drug referred to in clause (a), or*

(ii) without a valid license as required under clause (c) of section 18,

shall be punishable with imprisonment for a term which shall [not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more]:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of

imprisonment for a term of [less than three years and of fine of less than one lakh rupees];

(c) any drug deemed to be spurious under section 17-B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall not less than seven years but which may extend to imprisonment for life and with fine which shall not be three lakh rupees or three times the value of the drugs confiscated, whichever is more:

Provided that the Court may, for any adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than seven years but not less than three years and of fine of less than one lakh rupees] ”

Section 34 of the Drugs Act which deals with offences by companies reads as under:-

(34) Offences by companies:- *(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of

any director. manager, secretary or other officer of the company, such director, manager. secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

*In **State of NCT of Delhi through prosecuting Officer, Insecticid Government of NCT, Delhi. Vs Rajiv Khurana 2011 (1) 8CC (Crimes) 195**, the Supreme Court held that “the ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was Incharge of the business of the company or responsible for the conduct of the company's business. Every Director need not be and is not Incharge of the business of the company. If that is the position with regard to a Director, It is needless to emphasise that in the case of non-Director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable”.*

It further concluded that “unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial”.

*In **Pepsico India holdings Vs Food Inspector & Another**, the Supreme Court considered as to whether the presence of 0.00 1 mg of Carbofuran per litre found in the sweetened carbonated water, manufactured by the Appellant-Company, can be said to be adulterated as per Rule 65 of the 1955 Rules and under Section 2(ia) (h) of the 1954 Act, particularly in the absence of any validated standard of analysis provided for under the 1954 Act or 1955 Rules and on the question of liability of the Directors of the*

Company with respect to an offence alleged to have been committed by the Company, it held that the “the High Court went beyond the ratio of the decision of this Court in **S.M.S Pharmaceuticals Ltd.'s** case (supra) upon holding that the principles set out in the said decision could not be understood in any mechanical or rigid manner. It was held that *“in a complaint against a Company and its Directors, the Complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company”*.

The Supreme Court in **State of Haryana vs. Brij Lal Mittal** (supra) while dealing with the vicarious liability of a person for being prosecuted for offence committed by the company, held that:-

“It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in-charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfills both the above requirements so as to make him liable. Conversely, without being a director a person can be in- charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents

were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in-charge of the company and also responsible to the company for the conduct of its business.”

In **K.K. Ahuja v. V.K. Vora and Another (2009) 10 SCC 48**, the Supreme Court observed that the averment in a complaint that an accused is a director and that he is in charge of and is responsible to the company for the conduct of the business of the company, duly affirmed in the sworn statement, may be sufficient for the purpose of issuing summons to him. But if the accused is not one of the persons who falls under the category of 'persons who are responsible to the company for the conduct of the business of the company', then merely by stating that 'he was in charge of the business of the company' or by stating that 'he was in charge of the day to day management of the company' or by stating that he was in charge of, and was responsible to the company for the conduct of the business of the company', he cannot be made vicariously liable under Section 141(1) of the Act.

Even though [Section 34](#) of Drugs Act makes all the persons concerned with the company which is the principal accused vicariously liable; there must be definite averment in the complaint as to the role of each of the person arrayed as co-accused with the help of principles of vicarious liability. It is apparent that vicarious liability of persons for being punished for an offence committed under the Act by a company arises, if at the material time he was in charge of, and was also responsible to the company for the conduct of its business (as per [Section 34\(1\)](#) of the Act). Even otherwise under [Section 34\(2\)](#) of the Act where an offence under this Act has been committed

by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, each of them would be deemed guilty of the offence. If one peruses the provisions of [Section 34\(1\)](#) and (2) of the Drugs Act independently, what can be made out is that in Sub-section (1) of [Section 34](#) of the Drugs Act, every person who is shown to be in charge of, and was responsible to the company for the conduct of its business is deemed to be guilty. The use of the words 'every person' means it is irrespective of what is the position held by the said person whether be it as a Director, Manager, Secretary or any other officer of the company. If it is *prima facie* shown by the prosecution that such person was in charge of, and was responsible to the company for the conduct of its business by applying the principles of vicarious liability, he is deemed to be guilty of the offence and liable to be proceeded against. The *proviso* to said Sub-section (1) shows that even if such *prima facie* material is shown, it is open for the person so accused and charged to prove that irrespective of his being in charge of, and responsible towards the company for its conduct or business, the offence was committed without his knowledge or was done in spite of best diligence or preventive actions taken by him to prevent such offence. Hence the basic material and averment required so far as Sub-section (1) of [Section 34](#) of the Act is concerned is to *prima facie* show that the particular person/accused is in charge of, and was responsible to the company for the conduct of its business. Through this clause though almost every person connected with the company may be arrayed as accused and be prosecuted, be it the Director, Manager, etc., in its wisdom the legislature has added the

second clause to this section creating specific vicarious liability so far as Director, Manager, Secretary and other officers are concerned also and this provision starts with non obstante clause. Under Sub-section (2) of [Section 34](#) of the said Act, apart from showing that the accused person is a Director, Manager, Secretary or other officer of the company, it must be shown or proved that the offence has been committed with his consent or connivance or is attributable to any neglect on the part of such Director, Manager, Secretary or other officer of the company.

Having said so, there are certain restrictions and preventive measures placed by the legislation itself for making them co-accused along with the company. Prima facie requirement is that the complainant to substantiate the basic requirements like the present accused is, to show he is in charge of, or responsible for the conduct of the business of the company, be it in any capacity and if he is the Director, Manager, Secretary or officer of the company it should be averred and shown that the offence took place with his consent or connivance or is also attributable to the neglect on the part of such person viz. Director.

Notably, unlike the first information report as required under Section 154 CrPC which need not be elaborate and contain all the history of the case, the complaint under the Drugs Act is filed for specific and substantial offences. In the present case, it is the public servant, who on the basis of his own 'investigation' in respect of commission of offences under the Drugs Act lodges a complaint. In such an event, the accused person who is to be vicariously liable and this aspect he may come to know only after

taking of cognizance and issuance of process against him and only when he can either state that he does not fall either under the provisions of Section 34 of the Drug Act viz., that he is not a person in charge of, and was responsible to the assets of the company or the alternate arguments that even though he is the Director, Manager, Secretary or other officer of the company, it is not shown that the offence was committed with his consent or connivance or is attributable to any neglect on his part.

As observed by the Apex Court in various judicial pronouncements that merely because a person is a Director may not be concerned with day-to-day working of the company and as such only because of his holding of position, he cannot be straightaway arrayed as accused unless prima facie there is averment to clearly indicate what exactly is the role played by such Director, which resulted in the commission of the offence.

There is no merit in the averment raised by the petitioner that its company was not the manufacturer of the hand sanitizer but has only re-packed the same. He has placed on record tax invoice dated 08.04.2020 (Annexure P5) to show that the 'Isopropyl Alcohol' was purchased by Organo Laboratories Chemical P.Ltd. from J.S. Industries and as such the petitioner-company was not the manufacturer of the hand sanitizer in question and the same was purchased from M/s JS Industries, New Delhi. Further, the tax invoice No.1081 dated 11.04.2020 has been placed on record as Annexure P7 which shows that petitioner-company has sold the re-packaged canes/bottles of Sodium Hydrochloride (5 ltr cane) and Handrub (5 ltr cane

and 500 bottles each) for sanitizing in hospitals to Laksh Surgical & Medicos for an amount of Rs.2,65,440/-. By any stretch of imagination, it is expected from the petitioner and its company to verify and test the contents of the hand sanitizer and ensure that the same is utilizable by the masses which are already facing the anathema of pandemic. Even otherwise, the petitioner has to face the music of its mis-action because ultimately, the product which was allegedly purchased by the petitioner and its company, has been found to be adulterated and sub-standard.

The argument of the petitioner is also misplaced to aver that the order passed by the trial court is absolutely silent as to on which basis, the provisions of Section 18(a)(i) of the Drugs are made out against the petitioner. The trial court, at the very first instance, is not expected to carry out any investigation at its own level since such an issue is required to be ascertained during trial. The trial court is only required to see if *prima facie* offence, as alleged, is made out against the petitioner or not.

Even if the submission made by the petitioner that it has been well proved by the petitioner that its company, namely, Organo Laboratories Chemicals P.Ltd. has only purchased the hand sanitizer and re-packaged the same for onward sale, is taken into consideration, even then the petitioner cannot aloof himself the sanitizer being sold under name and banner of its company has been found to be adulterated. The petitioner cannot take recourse to *proviso* to Section 34 of the Drugs Act to say that the offence, if any, has been committed without his knowledge, consent and connivance.

A perusal of the complaint filed against the petitioner in the instant case would disclose that only a specific assertions have been made that the petitioner has committed offence by manufacturing and selling the drugs that are not of standard quality. The role and participation of petitioner in the day to day affairs of the company and his actual role in manufacturing the drugs in question has also been specified in the company.

Thus, on examination of facts namely the averments made in the complaint and the case laws extracted herein above, this Court, *prima facie*, is of the considered view that the averments made in the complaint regarding the role and responsibilities of the petitioner are specific and precise, and in these circumstances, the trial court was justified in taking cognizance of the offence alleged against petitioner and rejecting the prayer for anticipatory bail of the petitioner.

In view of above discussions, this Court is of the considered opinion that the petitioner does not deserve to be granted the concession of anticipatory bail, at this stage.

Dismissed.

02.06.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No