



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 154 OF 2022

Aarti d/o Ramdas Dhole @
Aarti w/o Nitin Jadhav,
Age 26 years, Occ. Education,
R/o. Gulab wadi, Jay Bhim Nagar
Dist. Aurangabad.

... Applicant

VERSUS

1) The State of Maharashtra,
Through Vedantnagar, Police Station,
Aurangabad.

2) Jeevan Dattatray Jadhav,
Age 48 years, Occ. Food Inspector,
Food & Drug Office, Gat No. 19,
Kanchanwadi, Paithan Road,
Aurangabad

... Respondents

...

Advocate for Applicant : Mr. P.P. Uttarwar
Addl.P.P. for Respondents/State : Mr. M.M. Nerlikar

CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : **09.01.2024**
PRONOUNCED ON : **12.01.2024**

ORDER : (PER : MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. waives service for the respondents/State. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By resorting to Section 482 of the Code of Criminal Procedure, the applicant who is one of the accused in Crime No. I-171/2021, registered with Vedantnagar Police Station Aurangabad for the offences punishable under Sections 18(c), 18A, 22(a), 22 (cca), 27(b)(ii), 27(d), 28A of Drugs

and Cosmetics Act, 1940, under 26 of the Drug Price Control Order, 2013, under Section 3(2)(c) and 7(1)(a)(ii) of the Essential Commodities Act, 1955 and under Section 420 read with Section 34 of the Indian Penal Code.

3. The sum and substance of the allegations as can be made out from the F.I.R. and the charge-sheet are to the effect that the respondent no. 2 was a Drug Inspector posted in the Food and Drugs Administration Office at Aurangabad. On 19.05.2021 Crime Branch Aurangabad (City) police informed him by a letter that some individuals were illegally selling Remdesivir injections. Accordingly, he went to the office of the Crime Branch, Aurangabad. While he was present there he and the crime branch received a tip that couple of persons would be carrying Remdesivir injections in a Swift Dzire car No. MH20/EY-8734 near Vits hotel. Accordingly, the crime branch officials laid a trap. When the car arrived, tallying with the number, it was accosted. The car halted in front of a shop couple of individuals sitting in the car were found to be carrying two Remdesivir injections each apart from the mobile handsets and cash. On enquiry they were unable to give satisfactory explanation but one of them Nitin Jadhav informed that the applicant who was his wife was working as a nurse in the Government Medical College and Hospital Aurangabad (GHATI) and she having handed him over those two injections. The muddemal was seized and the respondent no. 2 lodged the report, on the basis of which the offence was registered.

4. The learned advocate for the applicant would vehemently submit that though it is a fact that the applicant was engaged on contractual basis as a nurse with the Government Medical College and Hospital Aurangabad, the rest of the allegations are concocted. Except the statement of the husband who is a co-accused, nothing could be recovered during the course of investigation much less sufficient enough to make out the ingredients for constituting the offences. Merely on the basis of suspicion she has been implicated. The record of the stock of Remdesivir injections verified by the

investigating officer is not sufficient to demonstrate that the applicant has stolen those injections. Mere suspicion cannot take place of proof. It would be abuse of process of law if she is allowed to face the trial on the basis of mere suspicion.

5. Per contra, the learned A.P.P. would oppose the application. He would submit that apart from the disclosure by the applicant's husband who is a co-accused, it was also revealed during the course of investigation that being a nurse the applicant used to be handed over Remdesiver injections for being administered to the COVID patients and in all probability instead of administering injections to the patients who may not be aware, she must have decamped with the injections.

6. Having carefully gone through the papers and having considered the rival submissions, there cannot be a dispute about the fact that the applicant was serving as a nurse at the relevant time in the Government Medical College and Hospital Aurangabad and even was having custody of Remdesiver injections for being administered to the patients in that capacity as has been revealed in the investigation done with the administration of that hospital.

7. It is also apparent that the injections which were seized from the applicant's husband were having same batch number and the manufacturer which was supplied to the hospital.

8. Though it is a fact that there is also evidence in the form of statement of the head nurse Nilini Avinash Lahare to show that there were several other similar nurses working in the COVID ward apart from the applicant, more importantly she has stated that from 30.03.2021 to 19.05.2021 the applicant was deputed in COVID ward No. 9 on contractual basis as a nurse, she that is the witness, was assigning duties to the applicant and though she was present on duty on 18.05.2021 and 19.05.2021, the applicant remained absent from 20.05.2021. Whereas the trap was laid in the afternoon of

19.05.2021. Needless to state that by virtue of Section 8 of the Indian Evidence Act, even this conduct could be relevant at the trial.

9. Merely because there is no direct evidence revealing complicity of the applicant in commission of the crime, aforementioned circumstances and the material clearly demonstrate her complicity in the crime.

10. Since the applicant is seeking this Court to invoke the powers under Section 482 of the Code of Criminal Procedure, considering the limitations on the powers, it cannot be said that the case in hand falls in any of the categories laid down in the matter of *State of Haryana and Ors V/s. Bhajan Lal and Ors.: AIR 1992 Supreme Court, 604.*

11. The Application is rejected.

12. Rule is discharged.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-