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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. :1269 of 2024
Reserved on : 10.12.2024
Decided on : 23.12.2024

Avaindra Shukla ...Applicant

Versus

State of Himachal Pradesh ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1]

For the applicant : Mr. Narender Guleria and Mr. Adhiraj Thakur, Advocates.

For the respondent : Mr. H.S. Rawat and Mr. Mohinder Zharaick, Tejasvi Sharma, Additional Advocates General, with Ms. Ranjana Patial, Deputy Advocate General.

Virender Singh, Judge

Applicant-Avaindra Shukla has filed the present application, under Section 439 of the Code of Criminal Procedure (hereinafter referred to as the 'CrPC'), for releasing him, on bail, in a case, registered under Section 18(a)(i), read with Sections 17(B) and 36(AC), punishable under Section 27 of the Drugs and Cosmetics Act, 1940

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

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(hereinafter referred to as 'the Act'), by the Drugs Inspector, Headquarter Baddi, District Solan, H.P.

2. According to the applicant, he was arrested on 06.10.2023 and thereafter, is lodged in Sub-Jail, Nalagarh, District Solan, H.P. The complainant (Drugs Inspector, Headquarter Baddi, District Solan, H.P.) has filed a complaint, against him, which is pending adjudication, before the Court of learned Special Judge, Nalagarh.

3. According to the applicant, the said case was instituted, against him, on the ground that Regional Director, North Zone, FSSAI, through e-mail, has informed the Drugs Inspector that the officials of FSSAI, consisting of Mr. Vaibhav Vyas (Central Food Safety Officer), Mr. Sameer Bhagwat (Central Food Safety Officer) and Ms. Manisha Buriuli (Central Food Safety Officer), had visited the premises of the firm, namely M/s Glenmars Healthcare, 98, Modern Complex, Baddi, Solan, H.P., on 29.06.2023.

4. It is the further case of the applicant that during the visit, FSSAI team found that license of the said firm had already expired on 27.01.2023 and the said firm was not involved in the manufacturing of food items. Their

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entry was resisted by the applicant for about 15 minutes. Thereafter, search was conducted and during search, huge quantity of allopathic drugs was found in the premises. At the time of search, the search team had taken into possession the following samples of the drugs, which were found in the said premises:-

> *A. Amoxus-500 Capsules (Amoxycillin Trihydrate Capsules IP), B. No. CP04854, 06/23, Expiry 05/25, Manufactured by Morisus Healthcare, Industrial Bhagwanpur, Rorkee-247661, pack sized 20-10 Capsules total 69 boxes.*
>
> *B. Doxtil-200 tablets (Cefodoxime Proxetil), B.No. MHBT/23/038, Mfg date 04 Expiry date 03/25, Manufactured by: Morisus Healthcare, Industrial Bhagwanpur, Rorkee-247661, pack sized 10-10 Tab. total 79 boxes.*
>
> *C. MEF-200 Tablets (Cefixime Trihydrate and Lactic Acid bacillus Tablets), E MHBT/23/025, Mfg date 04/23, Expiry date 03.25, Manufactured by: Mon Healthcare, Industrial area, Bhagwanpur, Rorkee-247661, pack sized 10-10 total 100 boxes.*
>
> *D. Zathron-500 tablets (Amoxycillin tablets IP). B. No. 45865, Mfg 03.23, Ex 02/25, Manufactured by Reon Pharma, plot no. F-310, road no.3, Phase Kathwad, GIDC, Bhind Odhav Vepam, Ahemdabad (Gujrat), pack sized 10 Tablets total 26 boxes.*
>
> *E. Roxim-500 (Cefuroxime Axetil tables), B. No. 457783, Mfg date 03/23, Exp 02.26, Manufactured by Reon Pharma, plot no. F-310, road no.3, Phase Kathwad, GIDC, Bhind Odhav Vepam, Ahemdabad (Gujrat), pack sized 10 Tablets total 66 boxes.*
>
> *F. Ampicillin -500 Capsules (Ampicillin Capsules IP), B. No. RRCF002, Mfg 0 Expiry 04/25, Manufactured by Ross Robinz Biotech(Manufactured under guidance of Ashicon remedies, V.P.O Barog, Solan H.P)., pack sized 20 Capsules total 19 boxes."*

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5. It is the case of the applicant that thereafter, on 30.06.2023, Drugs Inspector, police officials and Executive Magistrate-cum-Naib Tehsildar had also visited the said premises and the same was found locked on that day, as, the same was sealed by the Drugs Inspector, which was de-sealed, as per the directions of the learned Judicial Magistrate First Class, Nalagarh.

6. According to the applicant, the drug samples, seized by FSSAI team, were also taken into possession by the Drugs Inspector and were sent to Regional Drugs Testing Laboratory, Chandigarh. The samples were not found to be having the medicines, which were being purported to be sold in them and other samples.

7. It is the further case of the applicant that on 06.10.2023, the applicant was directed to join the investigation at the Office of SDC Baddi and subsequently, he was arrested on that day.

8. The applicant is stated to have moved the bail application, before the Court of learned Special Judge, Nalagarh District Solan, H.P., however, the same was dismissed, vide order dated 19.12.2023. Thereafter, he had

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moved another bail application, which was also dismissed, vide order dated 13.03.2024.

9. On the basis of above facts, the applicant has sought the relief of bail, on the following grounds:-

i. That he has not committed the offence, as alleged, in the complaint.

ii. That he is innocent person and investigation, in the present case, is complete and nothing has been recovered from him or at his instance. This fact has been highlighted to show that his custodial interrogation is no longer required by the police.

iii. That the search and seizure proceedings, allegedly conducted by the Department, are not in accordance with law.

iv. That he is a sick man and is a chronic diabetic patient. He is also infirm and disabled person, as, prior to his arrest, in the year 2022, he met with an accident and his left leg was got fractured. Thereafter, he was operated and bolts were inserted on 22.09.2022.

v. That his health condition is deteriorating, in the jail premises, day-by-day.

vi. That on his request, he was medically examined by the doctors at Regional Hospital, Solan, on 04.12.2023 and 13.02.2024. In the medical examination, he was found to be suffering from high sugar level. All these facts have been highlighted to show that despite allegations, levelled against the applicant, he is entitled for bail, as per provisions of Section 36AC of the Act.

10. Apart from this, the applicant has given certain undertakings, for which, he is ready to abide by, in case, ordered to be released on bail.

11. During the pendency of the bail application, before this Court, in view of the request, the applicant was produced, before the Medical Board, which has assessed his disability as 15%, which is stated to be permanent disability, in relation to his left lower limb. The disability certificate was issued on 25.11.2024.

12. On the basis of above facts, Mr. Narender Guleria and Mr. Adhiraj Thakur, Advocates, appearing for the applicant, has prayed that the present application may be allowed, by releasing the applicant, on bail.

13. When put to notice, Drugs Inspector has filed the status report, reiterating the factual position, as

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asserted, by the applicant, qua the search and seizure of spurious drugs and the samples of the drugs, details of which have already been reproduced above.

14. It is the further case of the respondent that on 30.06.2024, after receiving the information from Regional Director, FSSAI, a team of Drugs Inspectors from SDC Office, Baddi, District Solan, had visited the premises of M/s Glenmars Healthcare, 98, Modern Complex, 1st Floor, Sai Road, Baddi, District Solan, H.P., but, the same was found to be locked. In this regard, the spot report was prepared. On the same day, they tried to contact applicant-Avaindra Shukla on his mobile No.92185-12771, but, the same was found to be switched-off. Thereafter, the landlord of the premises, Mr. Ajay Kumar, was called and subsequently, the lock of the premises was broken and opened. When, no stock of the drugs was found in the premises, then, the same was again locked and keys were handed over to the landlord.

15. It is the further case of the respondent that thereafter, a notice, under Section 22(1)(d) of the Act and the Rules, made thereunder, was pasted on the entrance of the premises, with a direction to the accused person

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(applicant) to join the investigation, in the present case, within three days, in the Office of State Drugs Controller, Baddi, District Solan, H.P., but, no reply was received.

16. Subsequently, on 03.07.2023, a team of Drugs Inspectors from SDC Office, Baddi, had again visited the premises, but, no person was found present there, despite issuance of notice. Thereafter, the said premises was sealed.

17. As per the case of the respondent, on 17.07.2023, a letter was written to Regional Director, FSSAI, Gaziabad, to provide the relevant records of the firm M/s Glenmars Healthcare, 98, Modern Complex, 1st Floor, Sai Road Baddi, Solan, H.P. On 21.08.2023, a request had been made to depute the official of FSSAI to join the investigation, who had conducted the inspection of the firm M/s Glenmars Healthcare, on 29.06.2023.

18. It is the further case of the respondent that on 21.07.2023, the proprietor of M/s Glenmars Healthcare had moved the application, before the JMFC, Nalagarh, to de-seal the aforesaid premises. Consequently, orders were passed to de-seal the said premises. However, on the same day, notice was served upon Ms. Anupama and Mr.

Avaindra Shukla (applicant), having Power of Attorney, to provide the requisite records.

19. It is the further case of the respondent that on 11.09.2023, Mr. Vaibhav Vyas, Food Safety Officer from FSSAI, Gaziabad, has joined the investigation and on that day, he has handed over the case property i.e. drugs, recovered by them on 29.06.2023, to Drugs Inspector Rajat Kumar. Thereafter, Drugs Inspector Rajat Kumar has seized all the drugs, produced by Central Food Safety Officer Mr. Vaibhav Vyas on Form-16, after drawing six legal samples of drugs on Form-17 & 17A, in the presence of Avaindra Shukla (applicant). The same were duly sealed with the seal impression 'RJT DI HP'. Thereafter, a notice, under Section 22(i)(cca) & 22(d) of the Act, was sent to the applicant, with a direction to join the investigation, but, he did not join and has been absconding till date.

20. According to the respondent, the samples of drugs, which were taken on 11.09.2023, were sent to the Government Analyst, Regional Drugs Testing Laboratory, Chandigarh, for testing and analysis. Thereafter, a notice was served upon firm M/s Morisus Healthcare Industrial Area, Bhagwanpur, Roorkee, for verification of the seized

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drugs. Similarly, notice dated 13.09.2023 was also served upon firm M/s Reon Pharma, Plot No.F-310, Road no.3, Phase-I, Kathwad, GIDC, Bhind Odhav Vepam, Ahmadabad, Gujarat, and notice dated 13.09.2023 was also issued to M/s Ross Robinz Biotech (manufactured under the guidance of Ashicon Remedies, VPO, Barog, District Solan, H.P.) for verification of the seized drugs. When, no response was received from M/s Morisus Healthcare Industrial Area and M/s Reon Pharma, then, vide letter dated 03.10.2023, Commissioner, Food & Drugs Control Administration, Gujarat and vide letter of the even date, Drugs Controller, Food and Safety, Drugs Administration, Uttarakhand, were requested to verify the credentials of the said firms.

21. It is the further case of the respondent that on 05.10.2023, firm M/s Ross Robinz Biotech has submitted a letter, in which, the firm disclosed that they do not have capsule section in beta-lactam category of drugs and they did not manufacture the said drugs. In view of the reply, submitted by the firm, according to the stand, taken by the Drugs Inspector, it is proved that the drugs, recovered from the premises of M/s Glenmars Healthcare, were not

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manufactured by M/s Ross Robinz Biotech and the same are spurious in nature.

22. It has been mentioned in the reply that on 06.10.2023, applicant-Avaindra Shukla was called to join the investigation in the Office of SDC, Baddi and further during the course of investigation, the applicant has not cooperated with the investigation and has not disclosed the complete details of spurious drugs, which were manufactured and sold by M/s Glenmars Healthcare. The applicant was arrested, on that day, at about 04:45pm.

23. It is the further case of the respondent that on 07.10.2023, a letter was received from Assistant Drugs Controller, Uttarakhand, disclosing therein, that no such firm, under the name and style of M/s Morisus Healthcare is operational. Hence, inference has been drawn that the drugs, recovered from the premises of M/s Glenmars Healthcare, are spurious and substandard drugs. Similarly, on 23.11.2023, a communication was received from Assistant Commissioner, Food and Drugs Administration, Ahmadabad, Rural Circle, Gandhi Nagar, Gujarat, disclosing therein, that no such firm, under the name and style of M/s Reon Pharma is operational, at the

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said address. Hence, it has been observed that the drugs, recovered from M/s Glenmars Healthcare, are spurious in nature and applicant-Avaindra Shukla is indulged in manufacturing of spurious and substandard drugs, under the name of fictitious firm.

24. Thereafter, analysis reports of all six samples of drugs, recovered from the premises of M/s Glenmars Healthcare, were received on 01.12.2023, in which, all the drugs had failed/declared 'not of standard quality', by the Government Analyst. The details of the report, which have also been mentioned, in the reply, are also reproduced hereinbelow:-

Sr. No.	**Name of drug, recovered & seized**	**Claim as per label of drug**	**Actual contents as per analysis report**
1.	Amoxycillin Trihydrate Capsules IP	500 mg	00.00%
2.	Cefodoxime Proxetil Tablets	200 mg	00.00%
3.	Cefixime Trihydrate and Lactic Acid Bacillus Tablets	200 mg	00.00%
4.	Azithromycin Tablets IP	500 mg	00.00%
5.	Cefuroxime Axetil Tablets	500 mg	00.00%
6.	Ampicillin Capsules IP	500 mg	83.71%

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25. On the basis of above facts, a prayer has been made to dismiss the application.

26. The applicant, in this case, is in judicial custody, in connection with the offence punishable, under Section 18(a)(i) read with Sections 17B, 36AC and 27. The provisions of Sections 17B, 18(a)(i) and 27 are reproduced, as under:-

> *"**17B. Spurious drugs**.—For the purposes of this Chapter, a drug shall be deemed to be spurious,—*
> *(a) if it is manufactured under a name which belongs to another drug; or*
> *(b) if it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or*
> *(c) if the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist; or*
> *(d) if it has been substituted wholly or in part by another drug or substance; or*
> *(e) if it purports to be the product of a manufacturer of whom it is not truly a product.*
>
> ***18(a)(i). Prohibition of manufacture and sale of certain drugs and cosmetics**.—*
> *(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;*
>
> ***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,—*

(a) any drug deemed to be adulterated under section 17A or spurious under section [17B and which] when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860) solely on account of such drug being adulterated or spurious or not of standard quality, as the case may be, shall be [punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more]:

[Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause:

Provided further that where the use of the adulterated or, spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

Explanation.—For the purposes of the second proviso, the expression "relative" means—
(i) spouse of the deceased person; or
(ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or
(iii) parent of the minor victim; or
(iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or
(v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death,—
(a) the parent; or
(b) a minor brother or an unmarried sister; or

(c) a widowed daughter-in-law; or
(d) a widowed sister; or
(e) a minor child of a pre-deceased son; or
(f) a minor child of a pre-deceased daughter where no parent of the child is alive; or
(g) the paternal grandparent if no parent of the member is alive;]

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

(ii) without a valid licence 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 17B, 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];

(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years [and with fine which shall not be less than twenty thousand rupees]:

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 one year."

27. As per the stand, taken by the Drugs Inspector, in this case, despite expiry of licence, on 27.01.2023, the firm M/s Glenmars Healthcare was dealing with the allopathic drugs and as per the report of the laboratory, the recovered drugs were found to be of substandard/spurious quality and not stated to be manufactured, as mentioned, on the drugs, which were found in the premises. This fact is sufficient to point out the seriousness of the offence.

28. Merely, the complaint has been filed, after the investigation and the matter is now pending, before the Court of learned Special Judge, Nalagarh, H.P., does not mean that the seriousness of the offence, which is required to be taken into consideration, has been reduced.

29. Huge quantity of drugs, i.e. Amoxus-500 capsules (69 boxes), Doxtil-200 tablets (79 boxes), MEF-200 tablets (100 boxes), Zathron-500 tablets (26 boxes), Roxim-500 capsules (66 boxes) and Ampicillin-500 capsules (19 boxes), were found from the said premises. The recovery of huge quantity of substandard/spurious

drugs speaks voluminously about the seriousness of the offence and in case, the applicant is ordered to be released on bail, it will give wrong signal to the society that after committing such offence, the applicant is still moving freely in the society.

30. Even otherwise, the release of the applicant, on bail, will also encourage other drug manufacturers to indulge in preparation/marketing of substandard/ spurious drugs to earn easy money.

31. Moreover, the affect of the spurious drugs on the persons, who used to consume the same, in the hope and faith, is also one of the major factor, which cannot be ignored by this Court, at this stage.

32. So far as the much relied arguments of learned counsel, appearing for the applicant, that case of the applicant falls in the exception/window, as provided by the Legislature, in its wisdom, in Section 36AC of the Act, are concerned, although, the disability has been mentioned as 15%, qua the lower left limb, but, the said disability is too short to consider the applicant, within the definition of 'ill' or 'infirm'.

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33. The report of the Government Analyst, Regional Drugs Testing Laboratory, Chandigarh, which has been reproduced above, also speaks voluminously about the seriousness of the offence, as, percentage of the actual contents, as per the analysis report, was 00.00% in five drugs, mentioned at Sr. No.1 to 5, whereas, in the drug, mentioned at Sr. No.6, the same was found to be 83.71%.

34. Another fact, which has rightly been highlighted, by learned Additional Advocate General, is that the similar case, regarding the indulgence of the applicant, in manufacturing of spurious drugs, has also been filed, against him, in the year 2020 and the said case is stated to be pending, in the Court of learned Special Judge, Nalagarh.

35. At this stage, there is nothing on record to justify that the twin conditions, as numerated, in Section 36AC of the Act, are existing in favour of the applicant, as, it cannot be said that the applicant has not committed the offence, nor it can be said that in case, he is ordered to be released on bail, he will not commit any offence. In the absence of the said satisfaction, the bail application cannot be accepted.

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36. Considering the seriousness of the offence, as alleged, against the applicant and in view of the discussions, made hereinabove, this Court is of the view that the applicant is not able to make out a case for relief of bail.

37. Consequently, the present bail application is dismissed.

38. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as, these observations, are confined, only to the disposal of the present bail application.

(Virender Singh)
Judge

December 23, 2024
(Gaurav Thakur)