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IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

CRM-M-33291-2024

Date of decision: 25th July, 2024

Suresh Kumar

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Dhruv Gupta, Advocate for the petitioner.
Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 438 of Cr.P.C.
seeking anticipatory bail in the FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
168	30.05.2024	Parao Ambala Cantt., District Ambala	63/65 of the Copyright Act, 1957 (for short 'the 1957 Act') and 420, 468, 471, 120-B of IPC

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 29.05.2024, a statement was recorded by the complainant Manoj Verma, an authorized representative of Uniliver Limited Company, alleging therein that he had received information that the petitioner along with his partner was indulged in the business of selling fake products of his company by manufacturing such products and by using duplicate labels and bottles. He had been filling fake shampoos, lotions and cream etc. in those bottles and they were being sold in the market by being represented as genuine once. He was doing all this under the garb of running



an industry under the name and style of M/s Payal Bakery and Namkeen Industry. On the basis of his statement, a team was prepared consisting of police officials, Drug and Control Officer and the complainant, which reached at the premises of Payal Namkeen Factory on 31.05.2021. Some workers were found working in the same. On checking, twenty-two small drums and seven big drums containing white color chemical, refill machine, belt machines, laser printing machine, one lamination machine, 850 empty cardboard boxes, several boxes containing empty bottles with rappers/without rappers and the rappers/ labels of the products of the company of the complainant, were found kept therein. A Tata Yodha make vehicle bearing registration No. HR37E-5695 containing 40 boxes of fake cosmetic products of the product which was sold by the Hindustan Uniliver Company under name of fair & lovely cream were found kept in the same. These all were fake creams. That apart, fake Glucose-D packets showing manufacturing of Dabur company were also found there. The same were taken into custody. FIR was registered. Investigation proceedings were initiated and the same are underway. Apprehending his arrest, the petitioner had moved an application for grant of pre-arrest bail which had been dismissed by the Court of learned Additional Sessions Judge, Ambala vide order dated 01.07.2024.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. He was not present at the spot. Only some workers were present at the time when the police officials and the complainant had raided the premises of the petitioner. No specific role has



been attributed to him. It is the wife of the petitioner who is owner of the premises of M/s Payal Namkin Industry. These premises were owned by wife of the petitioner and were rented out to Sumit Sharma resident of New Delhi on 27.03.2024 and the petitioner or his wife has no concern with the work which was being carried out therein. Recovery of fake products of Hindustan Uniliver Ltd. from his premises does not warrant drawing a presumption of mental culpability on the part of the petitioner. The basic ingredients for constituting offence of cheating have not been made out. The provisions of the 1957 Act, are not at all applicable. The alleged offences are covered under the provisions of Trademark Act, 1999 but the petitioner has not been booked thereunder. His custodial interrogation is not required. He is ready to join the investigation. No recovery is to be effected from him. Therefore, it is argued that he deserves to be extended benefit of pre-arrest bail. To fortify his arguments, learned counsel for the petitioner has placed reliance upon the case cited as '*Anil Kumar Vs. State of Punjab, 2011(18) RCR (Criminal) 304*' and '*CRM-M-21353-2016* tilted as '*Suresh Kumar Vs. State of Haryana, (2016:PHHC:077271)*'.

4. Status report has been filed by the respondent-State. It is submitted therein and it is argued by learned State counsel that there are serious and specific allegations against the petitioner who is having criminal antecedents. On conducting search of his premises, which are owned in the name of his wife, counterfeit products in the name of company of the complainant had been found to be manufactured in those premises. His custodial interrogation is required to unearth the truth. There are allegations



that he in-connivance with his wife not only manufactured counterfeit products and cheated the company of the complainant but also forged documents for this purpose. No extra ordinary and sparing circumstance warranting exercise of powers to grant of anticipatory bail has been made out. Therefore, it is urged that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. No doubt, in view of the Section 13 of the 1957 Act, the provisions of this Act are applicable to original literary work, dramatics, musical, artistic, cinematography and sound recording work and hence, cannot be stated to be applicable in cases relating to manufacturing of products used for cosmetic purposes like shampoo, face creams etc. As such, it is a question of debate as to whether, a case for commission of offences under Section 63 and 65 of the 1957 Act is made out or not? So far as the provisions of trade and merchandise marks Act are concerned, the relevant offences under those provisions are non-cognizable in nature. The petitioner in connivance with his wife, in this case, has however, also been booked for commission of offences punishable under Sections 420, 468, 471 read with Section 120-B of IPC as well on the allegations of not only manufacturing, counterfeit products in the name of M/s Hindustan Uniliver Limited but also forging the labels/rappers of this company meant for packaging purposes. For conducting thorough investigation in the matter, the custodial interrogation of the petitioner is must. Arrest is a part of procedure of the



investigation to secure not only the presence of the accused but several other purposes. The powers of anticipatory bail are extra ordinary and the same are to be exercised sparingly in exceptional circumstances. The judicial discussion conferred upon the Court has to be properly exercised after application of mind as to the nature and gravity of the accusation, possibility of applicant fleeing from justice and other factors to decide whether it is a fit case for grant of anticipatory bail as such grant to some extent interferes in the sphere of investigation of an offence. The Court must be circumspect while exercising such power for grant of anticipatory bail and it should not be granted as a matter of rule and has to be granted only when the Court is convinced that exceptional circumstances exist to resort to that extra ordinary remedy. In the present case, no such exceptional circumstances warranting exercise of the powers for grant of anticipatory bail by this Court are existing. As such, I am of the considered opinion that the petition does not deserve to be allowed. Accordingly, the same is dismissed.

7. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

8. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

25th July, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |