

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. CRM-M-41130-2023
Hunny MittalPetitioner
Vs.
State of HaryanaRespondent

II. CRM-M-43425-2023
Bachan LalPetitioner
Vs.
State of HaryanaRespondent

Reserved On: 21.12.2023
Pronounced On: 04.01.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. P.S. Sullar, Advocate for the
petitioner in CRM-M-41130-2023.

Mr. Arun Gupta, Advocate for
Mr. Vishal Khatkar, Advocate for the
petitioner in CRM-M-43425-2023.

Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.

By way of two petitions titled above, both filed under Section 439 Cr.P.C., petitioners have prayed for their release on regular bail in a case arising out of FIR No.315 dated 22.06.2023 registered at Police Station Jind City, District Jind under Section 7 of Essential Commodities Act (Act N: 10 of 1955); Section 63 of Copy Right Act, 1957 & Sections 120-B, 272, 273, 420, 467, 468, 471 of the IPC, 1860.

2. Status report in both the cases has been filed.

As per the prosecution case, on 21.06.2023, SI Deepak Kumar

along with other officials was present at Patiala Chowk, Jind on official duty, when he received secret information to the effect that Hunny Mittal (*petitioner in CRM-M-41130-2023*) & Bachan Lal (*petitioner in CRM-M-43425-2023*) are running a factory for manufacturing spurious Ghee, which is prepared by adding chemical and scent in refined oil and dalda ghee and that said spurious ghee is prepared in the name of Amul, Nova, Saras and Shakshi and sold in the market and thus, they are playing with the health of general public. Further information was that accused are using domestic cylinders illegally in preparing spurious oil and ghee. Relying upon the information, SI Deepak Kumar informed Food Safety Officer Joginder Singh on his mobile, who reached after some time. Raid was conducted. Owner of the godown Hunny Mittal along with his labour Bachan Lal were found at the spot, packing the spurious ghee. On search, 780 Lts. spurious ghee was recovered, apart from articles like gas burner along with regulator, domestic cylinder, electric weighing machine, containers, empty cartons and 850 empty Amul Ghee packets etc. Accused could not produce any license to manufacture the ghee. The Food Safety Officer separated 4 packets each of Nova half litre, Nova one litre, Amul one litre and Sanchi one litre as sample. These were converted into parcels and taken into possession.

(ii) FIR was lodged. On finding sufficient incriminating evidence against the petitioners, they were arrested on same day i.e., 22.06.2023. They also suffered separate disclosure statements disclosing the involvement of another accused Deepak Kumar. It was found that wrappers and tetra packs of famous companies namely Amul, Nova and Sanchi etc. were arranged by petitioner Hunny Mittal and co-accused Deepak from Gujarat and that the

chemical flavour, scent, butter colour were purchased from Delhi. On 23.06.2023, Investigating Officer visited Gupta Trading Company in Sadar Bazar, Delhi to whom duplicate ghee was supplied by the accused vide a particular GSTIN No. However, Jitender Aggarwal found there told that the shop was being run by his father, in which business of mobile phone was being done and that no ghee had been ever purchased by them. Thus, GST No. mentioned in the bill was found to be forged. One Arvind of New India Transport Company was joined in the investigation. Builty and bills were produced by him and it was disclosed by him that he had brought the goods from New India Transport, Jind. The perusal of the bills revealed that Aadhar Number of co-accused was written thereon. The owners of the shop and plot, from where recovery was effected, were joined in the investigation and they disclosed that the shops were given on rent by them to petitioner Hunny Mittal and at that time, co-accused Deepak accompanied him.

(iii) In the meantime, the samples taken by Food Safety Officer were got analyzed. As per the report of the lab, the samples of ghee recovered were found to be sub-standard. After concluding the investigation, challan against both the petitioners was submitted in the Court. In the meantime, co-accused Deepak approached this Court seeking anticipatory bail, which was declined on 24.08.2023.

3. It is contended on behalf of petitioner Hunny Mittal that he has been falsely implicated; that no offence under Sections 272 & 273 of the IPC, 1860 are made out, which otherwise are non-cognizable and bailable and that FIR could not be lodged. Learned counsel further contends that even Section 10-A of Essential Commodities Act, 1955, which was initially non-bailable, is

now bailable after the expiry of 15 years from the amendment which was introduced in 1981. It is further contended that no offence under Sections 420, 467, 468, 471 of the IPC are made out nor Section 63 of the Copyright Act, 1957 can be invoked, as the said section operates in entirely different domain with regard to the rights granted to the creators of musical, literary, artistic and dramatic works besides producers of sound recordings and cinematograph films. Learned counsel further contends that as per the nature of the case set up by the prosecution, the alleged offences fall under the domain of Prevention of Food Adulteration Act, 1954, as the recovery of alleged spurious ghee, if found to be mis-branded or sub-standard, then a separate procedure is prescribed and that police could not have registered the FIR. Learned counsel further contends that the two petitioners are in custody for the last more than 06 months; that challan has already been filed; that trial may take time to conclude and so, the petitioners be released on regular bail. Learned counsel for the petitioners have referred to ***CRM-M-43611-2019 titled as 'Anil Kumar & Others v. State of Punjab'*** decided by a co-ordinate Bench of this Court on 31.10.2023.

4. On behalf of petitioner Bachan Lal, an additional ground is raised that he was simply a labourer working with Hunny Mittal as is evident from the FIR itself and that he has no concern with the alleged offences.

5. Opposing the bail petitions, learned State counsel contends that since the spurious ghee was found with labels of famous companies like Amul, Nova etc., so provisions of Section 420, 467, 468 & 471 of the IPC, 1860 are applicable, as the petitioners were selling spurious ghee to the general public. Though it is not disputed by learned State counsel that

offences are also covered under the provisions of Food Safety and Standards Act, 2006 but it is contended that offences in question being cognizable, so role of the police cannot be taken out. It is also contended that apart from the fake labels of the famous companies, found from the spot, it was also revealed during investigation that a fake GST No. was mentioned on the bill, through which the spurious ghee had been sold. Contending that petitioners were playing with the health of general public putting their life to risk, prayer is made for rejecting the bail petitions.

6. I have considered submissions of both the sides and perused the record.

7. A similar matter was considered by a co-ordinate Bench of this Court in *Anil Kumar Singla's case* (supra), wherein quashing of an FIR registered under Sections 420, 272, 273, 274 & 120-B of the IPC, was sought. In that case, 7000 Lts. of adulterated milk, 19 quintals of cheese, 24 quintals of desi ghee, 40 kgs butter, 367 bags dry milk, 15 cans of refined oil, 15 bags of caustic soda, 300 packets of fena (surf) besides 6500 fake/forged logos of Shri Guru Dham Gaushala Desi Ghee were recovered from the possession of accused. On analysis, the samples of the recovered substances were found to be sub-standard. Contention was raised that Food Safety and Standard Act, 2006 is a comprehensive and self-contained legislation, being a Special Act covering the domain of food safety and standard and therefore, the provisions of IPC would not be applied. It was also contended that the investigating agency had acted upon the role of the food safety analyst and that analysis had been conducted in accordance with the provisions of Food Safety and Standard Act, 2006 and that Section 29 of the Act kept the police out of the

ambit of the Act. Still further, it was contended that the appointment of the Food Safety Officers has been provided for under Section 37 of the Act and powers of said officers was provided under Section 38 of the Act. Power to conduct search and seizure were prescribed under Sections 41 & 42 of the Act and that petitioners could be penalized only under the provisions of Food Safety and Standard Act, 2006 as per the rules laid therein. This Court referred to the various provisions of Food Safety and Standard Act, 2006 and concluded that where there is Special Act governing the field of food adulteration, the provisions of IPC are not attracted. It was further held that while the proceedings under the Prevention of Food Adulteration Act and Food Safety and Standard Act were maintainable, the FIR registered under the provisions of IPC stood quashed. This Court then quashed the FIR in question.

8. In the present case also, the allegations against the petitioners are regarding preparation and selling of the spurious ghee by putting labels of named companies. Said offences are prima facie covered under the provisions of Food Safety and Standard Act, 2006. Section 2(zf) of the Act provides mis-branded food as under:

“Misbranded food means an article of food–

(A) if it is purported, or is represented to be, or is being–

(i) offered or promoted for sale with false, misleading or deceptive claims either;

(a) upon the label of the package, or

(b) through advertisement, or

(ii) sold by a name which belongs to another article of food; or

(iii) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne on the package or containing the article or the label on such package; or

(B) if the article is sold in packages which have been sealed or

prepared by or at the instance of the manufacturer or producer bearing his name and address but—

(i) the article is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character; or

(ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular, or if the package is otherwise deceptive with respect to its contents; or

(iii) the article is offered for sale as the product of any place or country which is false; or

(C) if the article contained in the package—

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labelled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or

(ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use; or

(iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act.”

9. Section 29 of the Act provides for the authorities responsible for the Enforcement of the Act. Section 37 of the Act provide for appointment of the Food Safety Officer, whose powers are prescribed under Section 38 of the Act. Section 41 gives power of search, seizure, investigation, prosecution and procedure thereof. Besides Section 42 provides for procedure for launching of the prosecution.

10. In the present case, as per the police report, the samples of the recovered articles were found to be sub-standard. As it has been alleged that

labels of some reknowned companies were also found at the spot and that by using those labels, the spurious ghee was being sold, so prima facie, the accused were also possessing and selling mis-branded food, which again will be covered under the provisions of Food Safety and Standard Act. In all these circumstances, it is a moot point as to whether provisions of IPC can be attracted in such like circumstances for keeping in possession the fake labels of famous companies for the purpose of selling the spurious ghee. Apart from this, investigation is already complete. Challan has already been filed. The police report reveals that none of the petitioners have any criminal antecedents. Both of them are in custody for the last more than 06 months. Trial may take time to conclude.

11. Considering all the aforesaid circumstances, but without commenting anything further on the merits, this Court is of the view that no purpose shall be served by keeping the petitioners detained. As such, both the petitions are allowed. Petitioners are admitted to bail on their furnishing bail bonds/surety bonds to the satisfaction of the Learned Trial Court/Duty Magistrate concerned, on usual terms and conditions.

(DEEPAK GUPTA)
JUDGE

January 04, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No