



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 170 OF 2025

Avdesh Mukutbihari Sharma .. Applicant

Versus

The State of Maharashtra and another .. Respondents

**WITH
CRIMINAL APPLICATION NO. 172 OF 2025**

Avdesh Mukutbihari Sharma .. Applicant

Versus

The State of Maharashtra and another .. Respondents

Shri V. D. Sapkal, Senior Advocate i/by Shri Sandip R. Sapkal,
Advocate for the Applicant in both matters.

Mrs. Chaitali Choudhari-Kutti, A.P.P. for the Respondent Nos. 1
and 2 in both matters.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 11TH MARCH, 2025.**

FINAL ORDER :

. Learned Assistant Public Prosecutor tenders on record
copy of reply in both matters.

2. Heard both sides finally at the admission stage. There are
common questions of facts and law involved in both the criminal
applications and, therefore, I propose to decide them by this
common order.

3. The applicant is original accused in R.C.C. No. 01/2018 as well as R.C.C. No. 40 of 2018 pending before the Judicial Magistrate First Class (Corporation Court) Aurangabad and facing trial for offence punishable U/Sec. 18(a)(i) r/w Sec. 16 and Sec. 17(b) p/u Sec. 27(d) of the Drugs and Cosmetics Act. He is seeking quashment of both the proceedings under shield of doctrine of double jeopardy as per Article 20 of the Constitution of India and Sec. 300 of the Code of Criminal Procedure (for short 'Cr. P. C.')

4. Few relevant facts necessary for adjudication of these applications are that the applicant is facing criminal action for following offences :

(i) Cr. No. 718/2015 registered with Shipra Path Police Station, Jaipur for the offences punishable U/Sec. 27(b)(ii), 27(c) of the Drugs and Cosmetics Act r/w Sec. 420 and 487 of the Indian Penal Code which culminated into Sessions Case No. 45 of 2016 and lateron ended in conviction.

(ii) Cr. No. 334/2016 registered on 14.05.2016 with Police Station CIDCO, Aurangabad for the offences punishable U/Sec. 27(c) of the Drugs and Cosmetics Act, 1940 r/w Sec. 420 and 487 of the Indian Penal Code, which is lateron quashed by the Division Bench of this Court by judgment and order dated 02.05.2019 in Criminal Writ Petition No. 1355 of 2017.

(iii) R.C.C. No. 367 of 2018, which culminated into order dated 24.03.2022 passed by the learned Additional Chief Metropolitan Magistrate No. 4, Jaipur, State of Rajasthan, dropping the proceedings.

(iv) Impugned R.C.C. No. 01 of 2018 pending before the Judicial Magistrate First Class (Corporation Court) Aurangabad for the offence punishable U/Sec. 18(a)(i) r/w Sec. 16 and Sec. 17(b) p/u Sec. 27(d) of the Drugs and Cosmetics Act, 1940.

(v) Impugned R.C.C. No. 40 of 2018 for the offences punishable U/Sec. 18(a)(i) r/w Sec. 16 and Sec. 17(b) p/u Sec. 27(d) of the Drugs and Cosmetics Act, 1940 pending before the Judicial Magistrate First Class (Corporation Court) Aurangabad.

5. Undisputedly, the offence registered against the applicant in the State of Rajasthan bearing Cr. No. 718/2015 was ended in conviction by judgment and order dated 18.07.2018. Being aggrieved, applicant preferred appeal before the High Court of Rajasthan, which is pending. Cr. No. 334/2016 was quashed by the Division Bench of this Court vide judgment and order dated 02.05.2019 in Criminal Writ Petition No. 1355 of 2017. Third offence referred above i. e. R.C.C. No. 367 of 2018 was concluded by order dated 24.03.2022 by the Additional Chief Metropolitan Magistrate No. 4, Jaipur (Rajasthan) dropping the proceedings on the principles of double jeopardy as contemplated by Sec. 300

of the Cr. P. C. read with Article 20 of the Constitution of India. Last two proceedings are under challenge in the present matters. Those are sought to be quashed by invoking powers U/Sec. 300 of the Cr. P. C. read with Article 20 of the Constitution of India.

6. It is relevant to notice that first offence was registered against the applicant bearing Cr. No. 718/2015 on 03.11.2015. The applicant was arrested on or about 03.11.2015. Thereafter, he was in jail continuously till the orders suspending his sentence were passed by the High Court in his appeal on 02.02.2019. During his incarceration subsequent offences came to be registered against him, three at Aurangabad and one at Jaipur (Rajasthan). The applicant was found to be involved in illegal manufacturing and selling of spurious drugs. The raid was conducted at House No. 974, Shanti Nagar, in front of Durgapura Railway Station, Durgapura at Jaipur (Rajasthan) and spurious drugs with certain material were found. The formalities were completed and the matter was referred to the concerned police station.

7. The spurious drugs were distributed from that place to various places. A letter was addressed by the Drug Controller, Jaipur (Rajasthan) on 04.11.2015 to Drug Controller General of India, New Delhi referring illegal manufacturing of fictitious and spurious drugs. The copy of the said letter was forwarded to various drug controllers in different states. Along with the letter list of the firms to whom drugs were supplied containing drug

licence, invoice number and date of supply was also circulated.

8. After investigation, charge sheet was filed and the applicant was tried for the offences punishable U/Sec. 27(b)(ii), 27(c) of the Drugs and Comestics Act, 1940 r/w Sec. 420 and 487 of the Indian Penal Code. He was convicted vide judgment and order dated 18.07.2018. He was also sentenced for the distinct offences after the conviction. Being aggrieved, he preferred appeal, which is pending before the High Court of Rajasthan.

9. Learned senior counsel Mr. V. D. Sapkal appearing for the applicant submits that offence is the same and there should not have been separate registration of subsequent offences. He would submit that it is chain of events flowing from incident occurred on 02.11.2015. Subsequent, registration of offence including impugned proceedings are part and parcel of the offence which was first in time. He would rely on the judgment of the Division Bench of this Court passed on 02nd May, 2019 in Criminal Writ Petition No. 1355 of 2017, by which subsequently registered Cr. No. 334/2015 was quashed.

10. Learned senior counsel further adverted my attention to the order passed by the Additional Chief Metropolitan Magistrate No. 4, Jaipur (Rajasthan) on 24.03.2024 in R.C.C. No. 367 of 2018 quashing/dropping those proceedings in view of Sec. 300 of the Cr. P. C. read with Article 20 of the Constitution of India. It is submitted that there is only one transaction of

manufacturing and distribution of spurious drugs to various firms that would not give rise to independent cause of action to initiate criminal action against the perpetrator. He would rely on letter dated 04.11.2015 to demonstrate that how the information was circulated and would also place reliance on the conduct of the Drug Inspector Mr. M. N. Ayya, Drug Controller and informant in the impugned proceedings Mr. Vachan Singh Meena, Drug Control Officer from Jaipur. Learned senior counsel also relies on the judgment of the Supreme Court in the matter of **T. P. Gopalkrishnan Vs. State of Kerala** reported in **(2022) 14 SCC 323** to buttress the submission that impugned proceedings are unsustainable due to principle of double jeopardy.

11. Per contra, learned Assistant Public Prosecutor Ms. Chaitali Choudhari-Kutti would vehemently oppose the submissions of the learned senior counsel. She would refer to the affidavit in reply filed in both the applications. She would submit that the offence in which the applicant was convicted is altogether different than the offences involved in the impugned proceedings because different drugs were seized. She would also advert my attention to panchanama prepared at Aurangabad to show that the material found with the applicant was different. It is vehemently submitted that offences were different, overt acts were different and, therefore, the impugned proceedings are not continuation of the earlier offences. My attention is invited to order dated 24.03.2022 passed in R.C.C. No. 367 of 2018 to

buttress the submission that criminal court at Jaipur had dropped the proceedings because identical drugs were involved and that is not the case in the present matter. It is vehemently submitted that Sec. 300 of the Cr. P. C. cannot be involved to quash the present proceedings. Rather, the applicant is habitual offender and needs to be tried.

12. Having considered rival submissions of the parties, it reveals that applicant has already suffered conviction and sentence for the offence bearing Cr. No. 718/2015 by the competent Court at Jaipur (Rajasthan) and appeal against that is pending before the High Court of Rajasthan. Next offence registered against him bearing Cr. No. 334/2015 was quashed by the Division Bench of this Court holding that it would amount to double jeopardy by implication of Sec. 300 of the Cr. P. C. read with Article 20 of the Constitution. R.C.C. No. 367 of 2018 was dropped by the Additional Chief Metropolitan Magistrate at Jaipur (Rajasthan) vide order dated 24.03.2022. The impugned proceedings are sought to be challenged in the wake of decision of Division Bench.

13. The sequence of events commenced from 02.11.2015 and offence bearing No. 718/2015 was registered at Jaipur (Rajasthan). Various spurious drugs were found, which were illegally manufactured and distributed by the applicant. It is evident from the conduct of the Drugs Controller and the concerned officers that the information was circulated to the

higher authorities along with necessary details as the spurious drugs were noticed to be distributed to various states. The Drugs Controllers were in contact with each others and by coordination the activities of the applicant were circulated and informed. When Cr. No. 334/2016 was registered with Police Station CIDCO, Aurangabad, it was again a case of spurious drugs found at Shop No. 2, Plot No. 36 of Ganesh Housing Society, N-8, Aurangabad. The charge sheet was filed in the offence after completion of the investigation. That was sought to be challenged by preferring Criminal Writ Petition No. 1355 of 2017. Identical grounds of objections were raised by the applicant before the Division Bench. By elaborate and well reasoned order, criminal writ petition was allowed and the proceedings were quashed. It is relevant to refer to following paragraphs.

“7. Let us first consider the legal aspects raised by the petitioner relating to filing of the second F.I.R. The Apex Court in Amit Shah's case (*supra*), observed :-

“32. This Court has consistently laid down the law on the issue interpreting the Code, that a second F.I.R. in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In *T.T. Anthony* (AIR 2001 SC 2637) (*supra*), this Court has categorically held that registration of second F.I.R. (which is not a cross case) is violative of Article 21 of the Constitution. The following conclusion in paragraph nos.19, 20

and 27 of that judgment are relevant which read as under :

“19. The scheme of Cr.P.C. is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 Cr.P.C. on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forward his report to the Magistrate concerned under Section 173(2) Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh F.I.R.; he is empowered to make further investigation, normally with the leave of the Court, and where during further investigation he collects further evidence oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of subsection (8) of Section 173, Cr.P.C. 20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an

incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the F.I.R. but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173, Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case (AIR 1979 SC 1791) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive F.I.Rs. whether before or after filing the final report under Section 173(2), Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156, Cr.P.C., nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive F.I.Rs., not being a counter

case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first F.I.R. either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482, Cr.P.C. or under Articles 226/227 of the Constitution”

The above referred declaration of law by this Court has never been diluted in any subsequent judicial pronouncements even while carving out exceptions.

33. In C. Maniappan (supra), this Court explained “consequence test”, i.e., if an offence forming part of the second F.I.R. arises as a consequence of the offence alleged in the first F.I.R. then offences covered by both the F.I.Rs. are the same and, accordingly, the second F.I.R. will be impermissible in law. In other words, the offences covered in both the F.I.Rs. shall have to be treated as a part of the first F.I.R.

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36. In Babulal (supra), the Privy Council has held that if several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy (a circumstance which makes the act of one the act of each and all the conspirators), these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it. The common concert and agreement which constitute the conspiracy, serve to

unify the acts done in pursuance of it.

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42. In the case of Babubhai (2010 AIR SCW 5126) (supra), the very same Bench considered the permissibility of more than one F.I.R. and the test of sameness. After explaining F.I.R. under Section 154 of the Code, commencement of the investigation, formation of opinion under Section 169 or 170 of the Code, police report under Section 173 of the Code and statements under Section 162 of the Code, this Court, has held that the Court has to examine the facts and circumstances giving rise to both the F.I.Rs. and the test of sameness is to be applied to find out whether both the F.I.Rs. relate to the same incident in respect of the same occurrence or are in regard to the incidents having two or more parts of the same transaction. This Court further held that if the answer is in affirmative, the second F.I.R. is liable to be quashed. It was further held that, in case the contrary is proved, where the version of the second F.I.R. is different and is in respect of the two different incidents/ crimes, the second F.I.R. is permissible. This Court further explained that in case in respect of the same incident the accused in the first F.I.R. comes forward with a different version or counterclaim, investigation on both the F.I.Rs. has to be conducted. It is clear from the decision that if two F.I.Rs. pertain to two different incidents crimes, second F.I.R. is permissible. In the light of the factual position in the case on hand, the ratio in that decision is not helpful to the case of the C.B.I.”

8. The F.I.R. registered at Shipra Path Police Station, Jaipur records that the officials of the Controller of Drugs, Rajasthan searched the premises. It was noticed that, number of drugs were stored on the ground floor, besides the machinery like Mixer, bottling machine, sealing machine, blister packing machine and packing material etc. It was also found that the drugs were manufactured on the very premises. Labels on the containers of the drugs, however, showed it to have been manufactured by M/s Avya Health Care, Rudrapur, District Mandi. On enquiry with the concerned authority, it was found that, no such firm by name Avya Health Care did exist. The drugs and medicines found during the raid came to be seized. Samples thereof were taken. It was further found that the drugs manufactured there, were supplied and sold at Aurangabad, Sangli in the State of Maharashtra and in some other States as well.

10. Admittedly, the Controller of Drugs, Rajasthan informed about the raid to his counterpart in Maharashtra. Consequently, the office of Joint Commissioner, Food & Drugs Administration, Aurangabad Division came to be informed on 9.11.2016. Shri Manoj Ayya, Drug Inspector, therefore, paid visit and inspected visited Richmond Laboratory, Shop No.2, Ganesh Housing Society, CIDCO, Aurangabad on 21.11.2015 and inspected the same. During the inspection, it was found that, the drugs manufactured on the premises at Jaipur, however, were stocked/ stored in the Shop No.2. Samples of TFLOX-OZ Tab, B.No.AAH0947 and Coldbee Suspension, B.No.AAH0981 were obtained for analysis. Purchase bills and sale invoices available at the shop came to be seized. The samples of both the drugs have been analysed by the Public Analyst to find that both the drugs did not conform to the standards

and thus were spurious. While the F.I.R. was lodged, the Public Analyst's report regarding TFLOX-OZ Tab was available. The report regarding "Coldbee Suspension" was received later on. The Drug Inspector, therefore, lodged the F.I.R. on 14.5.2016, alleging the respondent Richmond Laboratory/ Shop owner, Shri Abhijeet Wagdalkar (co-accused) and the petitioner herein, in furtherance of their conspiracy, manufactured, stored and sold spurious drugs.

12. Since the offence covered by the second F.I.R. forms part of the same transaction of the offence covered by the first F.I.R., the second F.I.R., so far as regards the petitioner is concerned, is unsustainable in law in view of the dictum of the Apex Court in Amit Shah's case (*supra*). The impugned F.I.R. is, therefore, liable to be quashed so far as regards the petitioner is concerned. The proprietor of Richmond Laboratory is not before us. His case would, therefore, not be governed by this order.

20. The Public Analyst's report indicates the two drugs seized from Richmond Laboratory were found to be spurious. There is record to prima facie indicate compliance of Section 25(2) of the Act. Copy of the report was sought to be delivered to the petitioner in jail. He, however refused to receive the same. The charge sheet (now supplementary) came to be filed after shelf life of the drugs was over. The petitioner may, therefore, be justified to contend to have suffered prejudice in his right to have the sample tested by Central Laboratory. We do not propose to give any positive finding in view of the fact that the Drug Inspector has launched prosecution against the petitioner and the proprietor of Richmond Laboratory, Aurangabad by filing complaint before the Court of Judicial Magistrate, First Class. The petitioner is at liberty

to agitate his grievance since the prosecution launched pursuant to the said complaint is not under challenge in this Writ Petition.

23. In the result, the petition partly succeeds in terms of the following order :

ORDER

(i) The Criminal Writ Petition is partly allowed.

(ii) F.I.R., being Crime No.334/2016, registered with CIDCO, Aurangabad Police Station is quashed so far as regards the present petitioner is concerned.

(iii) Charge Sheet No.301/2017 is treated as supplementary charge sheet, lodged pursuant to the further investigation and the same, therefore, be sent to Shipra Path Police Station, for further course of action regarding prosecution of the petitioner for offence punishable under Section 420 read with Section 120-B of the Indian Penal Code and any other offence, but not any offence under the Drugs and Cosmetics Act, 1940, since the prosecution has been launched by filing a complaint.

(iv) We hope that the Police Station Incharge of Shipra Path Police Station, Jaipur would do the needful to ensure that the petitioner is tried for the offence/s disclosed to have been committed by him during the further investigation.”

14. Ultimately, the charge sheet bearing No. 301/2017 filed in that offence was directed to be treated as supplementary charge sheet and directed to be transmitted to the Police Station

Incharge Kshiprapat Police Station, Jaipur (Rajasthan) and obviously criminal case was quashed. I propose to adopt the same course and reasons.

15. Another reason to accept the submissions of the learned senior counsel is that the Additional Chief Metropolitan Magistrate No. 4, Jaipur in collateral proceedings bearing R.C.C. No. 367 of 2018 dropped the proceedings on almost identical line vide order dated 24.03.2022. Thus not only the Division Bench of our High Court held that it was double jeopardy, but competent Court at Jaipur (Rajasthan) also concluded in the same manner.

16. I find that the drugs seized from the applicant at Aurangabad might not be the same, from those seized in the first offence. However, fact remains that in the first offence there was allegation of illegal manufacturing and distribution/sell of spurious drugs to various dealers and distributors in India. The Division Bench also concluded that these are the sequence of same offences or rather it is chain of events and the independent instances cannot be treated as separate offences giving separate cause of action.

17. Learned A. P. P. has vehemently pointed out that the samples, panchanama, place of offence and hence there are separate offences. It is not the case of the prosecution that before registering offences at Aurangabad the applicant was found to have illegally manufacturing and distributing the spurious

drugs. The overt act alleged against the applicant in the impugned proceedings have a nexus to his earlier overt act, which was part of the prosecution conducted against him in Rajasthan. The applicant was in jail from 03.11.2015 till 02.02.2019. It was not possible for him in normal course of circumstances to indulge in the illegal activity. It is also not case of the prosecution that after releasing on bail, he indulged in the activities of illegal manufacturing and distribution of spurious drugs. I am unable to concur with the submissions of the learned A. P. P.

18. It would be useful to refer to judgment cited by the learned senior counsel of the Supreme Court in the matter of **T. P. Gopalkrishnan Vs. State of Kerala** (supra). Relevant extracts in para Nos. 24, 25, 27, 31 and 32 of the judgment are given hereinbelow.

“24. Section 300 of the CrPC embodies the general rule which affirms the validity of the pleas of *autrefois acquit* (*previously acquitted*) and *autrefois convict* (*previously convicted*). Sub-section (1) of Section 300 lays down the rule of double jeopardy and sub-sections (2) to (5) deal with the exceptions. Accordingly, so long as an order of acquittal or conviction by a court of competent jurisdiction remains in force, the person cannot be tried for the same offence for which he was tried earlier or for any other offence arising from the same fact situation, except the cases dealt in with under sub-sections (2) to (5) of the section.

25. Section 300 of the CrPC is based on the maxim *nemo*

deber bis vexari, si costest curiae quod sit pro una et eadem causa which means that a person cannot be tried a second time for an offence which is involved in an offence with which he was previously charged. As per the decision of this Court in *Vijayalakshmi vs. Vasudevan (1994) 4 SCC 656* in order to bar the trial of any person already tried, it must be shown that :

- (i) he has been tried by a competent court for the same offence or one for which he might have been charged or convicted at a trial, on the same facts,
- (ii) he has been convicted or acquitted at the trial, and
- (iii) such conviction or acquittal is in force.

27. Section 300 of the CrPC bars the trial of a person not only for the same offence but also for any other offence on the same facts, vide *Thakur Ram vs. State of Bihar AIR 1966 SC 911*.

31. Before dealing with the issue at hand, it is necessary to understand what the term 'same offence' means and includes. The term 'same offence' in simple language means, where the offences are not distinct and the ingredients of the offences are identical. Where there are two distinct offences made up of different ingredients, the embargo under Article 20 of the Constitution of India, has no application, though the offences may have some overlapping features. The crucial requirement of Article 20 is that the offences are the same and identical in all respects, vide *State (N.C.T. of Delhi) vs. Navjot Sandhu (2005) 11 SCC 600*.

32. The concept of double jeopardy can also be understood in terms of Article 21 of the Constitution of India which states that no person shall be deprived of his life or personal liberty except according to procedure established by law. 'Life' under Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider connotation; it includes the right to live with human dignity. In the celebrated judgment in the case of *Maneka Gandhi vs. Union of India* 1978 AIR 597, this Court gave a new dimension to Article 21, wherein it stated that the right to live includes within its ambit the right to live with dignity. Under the umbrella of Article 21, various rights like right to free legal aid, right to speedy trial, right to fair trial, etc. have been included. Similarly, protection against double jeopardy is also included under the scope of Article 21 of the Constitution of India. Prosecuting a person for the same offence in same series of facts, for which he has previously either been acquitted or has been convicted and undergone the punishment, affects the person's right to live with dignity.

19. I find that it is an abuse of process of law to ask the applicant to face the impugned proceedings for the alleged overt act, which is part and parcel of the first offence or emanating from the first offence. In the peculiar facts and circumstances of the case, I am of the considered view that case is made out to cause interference in the impugned proceedings. I, therefore, pass following order :

O R D E R

- A. The criminal applications are allowed.
- B. R.C.C. No. 01 of 2018 and R.C.C. No. 40 of 2018 pending before the learned Judicial Magistrate First Class (Corporation Court) Aurangabad are quashed and set aside to the extent of the applicant.
- C. This will not preclude the respondents or its counter part from State of Rajasthan to utilize the material collected against the applicant in the proceedings which are pending before the High Court of Rajasthan.

[SHAILESH P. BRAHME J.]

bsb/March 25