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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 2692 OF 2024

Amit Kumar Sharma

Applicant

.. (Orig. Accused No.5)

Versus

The State of Maharashtra

.. Respondent

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- Mr. Prasannan Namboodiri a/w. Ms. Prathibha Namboodiri, Ms. Pallavi Dabak, Ms. Tejal Darekar and Mr. Rishabh Sinha, Advocates for Applicant.
 - Ms. Savita M. Yadav, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.
DATE : JANUARY 07, 2025.

P.C.:

1. Heard Mr. Namboodiri, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent – State. Perused the record.

2. Present Bail Application before me is filed seeking grant of bail by Accused No.5 i.e. Amit Kumar Sharma. He is ‘General Manager-Sales’ of a proprietor firm called ‘Captab Biotec’ having its registered office in Plot No.D-235, 3rd Floor, Industrial Area, Phase 8B, Mohali, Punjab - 160071. ‘Captab Biotec’ is a licensed proprietorship concern authorised to sell, stock, exhibit, offer for sale and distribute by wholesale only, drugs other than those specified in the Schedules.

3. Indictment of the Applicant is on the ground that ‘Captab Biotec’ supplied 2000 bottles of Triprolidine Hypochloride & Codeine

Phosphate Syrup – Zebi Gold Cough Syrup in bulk quantity and received payment for the same. It is surprising that Applicant before me is an employee of ‘Captab Biotec’ drawing a monthly salary and he has been incarcerated in prison since 23.11.2023. Date of the alleged offence / incident according to the prosecution is 09.09.2023.

4. First Information Report (for short “**FIR**”) is registered indicting 5 Accused. Accused No.1 is Amjad Pathan; Accused No.2 is Ravindra Jaiswal; Accused No.3 is Paresh Jain; Accused No.4 is Ganesh Bavskar whereas Accused No.5 is Amit Kumar Sharma, Applicant before me.

5. In the course of regular business, Applicant on behalf of ‘Captab Biotec’ sold the consignment containing 2000 bottles of syrup to one of its existing client ‘New Mahavir Medical’ with whom Captab was having a business relationship. Invoice is appended at page No.80 of the Bail Application. It is a GST invoice dated 23.08.2023 alongwith a copy of E-way Bill of having dispatched the consignment to the destination of ‘New Mahavir Medical’ situated 1531 kms. away in District Vapi, Gujarat. The consignment E-way Bill Number is also appended at page No.81 of the Bail Application.

6. Mr. Namboodiri has drawn my attention to the receipt of payment and would inform the Court that the case of the prosecution stems from the said receipt of payment by ‘Captab Biotec’ in its bank

account. Detailed entry wise statement of Bank transactions in the current bank account of 'Captab Biotech' is appended and disclosed in the Application. It is seen that the statement which is appended is for the period beginning from 01.04.2023 to 30.04.2023. Perusal of the said statement itself shows that there is a business relationship between 'Captab Biotech' and 'New Mahavir Medical' which is evident from some of the previous entries in the current account in that very month. I am concerned with the current account statement for the date 22.08.2023 and onwards for the transaction in question. There is an entry with respect to receipt of advance amount received through paytm for Rs.20,000/- towards the invoice which is generated on the same date i.e. 22.08.2023 for supply of the consignment.

7. Mr. Namboodiri would draw my attention to the 3 entries thereafter against the date 29.08.2023 which are cash deposit entries for the three amounts of Rs.69,300/-, Rs.4,700/- and Rs.100/- against the invoice amount. He would submit that in so far as the transaction of 'Captab' is concerned, the same stands completed since it is entirely in consonance with the provisions of the Drugs and Cosmetics Act as also the Rules prescribed thereunder. It is a transparent, legal and valid transaction. All correspondence for that purpose are appended to the Bail Application. The investigation is complete and charge-sheet is also filed.

8. What is not understood is the fact that the Applicant employee who is the 'General Manager-Sales' and drawing a monthly salary of Rs.40,000/- per month has not only been indicted, but he was brought all the way to Thane and thereafter arrested on 23.09.2023 and since then he is incarcerated. Hence, I wanted to know about his complicity in the transaction. There is none. He acted on behalf of the Company.

9. Ms. Yadav, learned APP draws my attention to the statement of Mr. Sumit Mayyer explaining the receipt of the amount against the 4 entries in the bank account which are delineated hereinabove, wherein he has stated that appropriate investigation should take place. If that be the case there is no reason for the prosecution to have arrested Paresh Jain Accused No.3, who is proprietor of 'New Mahavir Medical'. Prosecution is playing hide and seek. They have not taken any action against the proprietor of 'Captab Biotech' and instead arrested an employee of 'Captab Biotech'. There is no explanation forthcoming from the entire record produced before me. Nor it is Captab's case the transaction in question is disowned by them.

10. Mr. Namboodiri, learned Advocate for Applicant would draw my attention to the licence issued in favour of 'Captab Biotech' in Form 20B which is appended at page No.65 of the Bail Application. Condition No.3 therein requires absolute compliance and in the

present case it is seen that the said condition stands fully complied with when such a sale takes place.

11. It was the duty of the Investigating Officer after receiving the aforesaid papers from 'Captab Biotec' to go through the same and conduct a proper investigation which I *prima facie* find has not been done. The investigation by the Investigating Officer is a sorry and shady state of affairs. The learned APP has done her best to argue that the 3 subsequent payments received by the Company are not from 'New Mahavir' but the other 3 Accused and therefore the indictment.

12. Apart from the above, it is seen that there is complete violation of the provision of Section 50 of the Code of Criminal Procedure, 1973 (for short "**Cr.PC.**") and Section 52-A of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "**NDPS Act**"). It is seen that the act of drawing the samples has also not been in compliance with the provisions as required under the NDPS Act. In so far as Section 50 of the Cr.PC. is concerned, the Investigating Agency / Officer has committed a mockery of the powers entrusted. The Investigating Officer visited Mohali and collected all details from Mr. Sumit Mayyer, proprietor of 'Captab Biotec' which are mentioned in his statement appended at page No.176 of the Bail Application. He alongwith the General Manager-Sales i.e. Applicant on behalf of the Company brought him to Thane and immediately arrested him and put

him behind bars. This is shocking to say the least.

13. Record shows that 'Captab Biotec' has transported and delivered the entire batch of the concerned codeine phosphate syrup under a GST invoice, E-way Bill and consignment of lorry receipt to 'M/s. New Mahavir Medical'. The said proprietorship firm called 'Captab Biotec' is registered pharmaceutical Company involved in development and marketing of pharmaceutical products and its licence is placed at page No.65 of the Bail Application. The transaction in question is under the licence granted to the said Company and transparent. The sole proprietor's detailed statement is recorded.

14. *Prima facie*, it is also seen that the Investigating Officer had issued letter for enquiry to the said Company called 'Captab Biotec' and Mr. Sumit Mayyer, who is the sole proprietor to remain present, but he did not remain present. Action of the Investigating Officer in justifying the arrest of the employee of the Company *prima facie* is therefore not understood by this Court.

15. One of the issue which is seen from the record of the case is that according to the prosecution 'Mahavir Medical' is not found at the relevant address and therefore it is assumed that the 3 other accused persons have paid the cash amount into the account of the said Company are accused Nos.1, 2 and 4. Even if the prosecution may be right in this, still it does not justify the action of arrest of the Applicant

– Amit Kumar Sharma, who is admittedly the employee working with ‘Captab Biotec’.

16. *Prima facie*, it is seen that when the Investigating Officer confronted Mr. Sumit Mayyer in Mohali, Punjab, the entire ledger account of ‘New Mahavir Medical’ was also handed over to him alongwith the entire documentary evidence.

17. In the light of the above observations and findings and the investigation having been completed as also the fact that the charge-sheet is filed, there is no justification for keeping the Applicant who is employee of ‘Captab Biotec’ in incarceration any longer.

18. Hence, the following order:-

- (i) Applicant – Amit Kumar Sharma is directed to be immediately released from prison in connection with C.R. No.301 of 2023;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one surety of the like amount;
- (iii) Since Applicant is not from Thane, he shall be entitled to pay the surety by cash bail and replace the same by the surety within a period of one month from today;
- (iii) Applicant shall report to the Investigating Officer as and when called for; and

- (iv) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable.

19. Bail Application is allowed and disposed of in the above terms.

[MILIND N. JADHAV, J.]

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