

Prasad Rajput
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 127 OF 2025

Suresh Dattatray Patil

.. Applicant

Versus

State of Maharashtra

.. Respondent

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- Mr. Aniket Nikam a/w Mr. Dushyant Digambar i/b Mr. Amit Icham, Advocates for Applicant.
- Mr. Sukanta A. Karmakar, APP for State.
- Mr. Deepak S. Dammalwad, Thanenagar Police Station, Thane city.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 16, 2025

P.C.:

1. Heard Mr. Nikam, learned Advocate for Applicant and Mr. Karmakar, learned APP for State.

2. This is an Application filed by Applicant apprehending arrest in connection with C.R. No. 556 of 2024 dated 04.06.2024 registered with Thane Nagar Police Station for the offences punishable under Sections 420, 467, 468, 471, 276 r/w 34 of the Indian Penal Code and under Section 18(A)(i) r/w 17(B), 27(A) of the Drugs and Cosmetics Act, 1940.

3. Applicant is a distributor of medicines operating in the name of Vishal Enterprises, Kolhapur. The Applicant distributes medicines to the District Health Office and certain formulations and drugs are

seized by the Assistant Commissioner Food and Drug Administration sometime in April, 2023. After collecting the samples they were sent for analysis and the allegation is that they were spurious.

4. *Prima facie* the record clearly shows that the Applicant is a mere distributor procuring the said medicines from M/s Activenetis Biotech Pvt. Ltd. Thane. The medicines were procured on an invoice and delivery basis. Record shows that M/s Activenetis Biotech Pvt. Ltd. procured the said medicines from M/s Cabhi, S Generic House, Mira Road, Thane once again on invoice and delivery basis, details of which are available on record. Record further shows that M/s Cabhi, S Generic House, Mira Road, Thane procured the said medicines from M/s K.P. Medical Agency, Haryana. How they purchased the medicines is for the investigation to reveal.

5. The State Drugs Controller cum Licensing Authority of Haryana has revealed through official communication to the prosecution that the said M/s K.P. Medical Agency is not in existence and at the given address there is a barber's shop. The prosecution has thereafter addressed a letter to M/s Mrystal formulations, Uttarakhand who is the alleged manufacturer of the subject medicines in question. Said inquiry letter has been returned back as not delivered. Prosecution has not taken any steps hereafter. Based on the above allegations FIR has been lodged against the Applicant. After giving him

Section 41A notice to participate in the investigation and enquiry, the proforma charge-sheet is now filed impleading the Applicant as one of the accused.

6. At the outset, learned Advocate for the Applicant draws my attention to the order dated 11.12.2024 passed by this Court (Coram: Urmila Joshi-Phalke, J.) in Criminal Anticipatory Bail Application 791 of 2024, wherein on identical facts, the present Applicant who is a distributor of medicines through another distributor has been granted Anticipatory Bail. *Prima facie* it is seen that Applicant is neither the manufacturer nor he purchased and procured the medicines from the manufacturer. In view of the aforementioned timeline and the chain of distributors involved, question therefore would be whether the Applicant has committed any offence. *Prima facie* on the basis of the available record in my opinion, Applicant has not.

7. There is a serious lacunae in the investigation which is carried out. Investigating Agency cannot merely write letters to their counterparts in Haryana and Uttarakhand and thereafter rest it at that and make the Applicant as scapegoat. In such matters if the submissions made by Mr. Karmakar, learned APP are to be considered, then the Investigating Agency will have to pull up its socks and carry out proper investigation. If required, Investigating Agency should visit the State of Uttarakhand and Haryana in order to go to the root of the

matter and take assistance of their counterparts in those states. Merely alleging the concept of vicarious liability in such matters is not enough nor it is appreciated by this Court. It is no doubt that such offences will have to be dealt with strictly especially when they involve public health at large. It is a matter of serious concern and therefore the Investigating Agency will have to align its investigation in the right direction if it is going to apprehend or requires to put an end to this crime and catch the real culprits.

8. Admittedly, the Applicant has procured a tender from the government to supply the medicines to district hospitals and therefore Applicant is required to procure the drug from its manufacturers and distributors which is clearly evident from the chain of distributors which is delineated hereinabove. In my opinion, custodial interrogation of Applicant in such a case is not required as the Applicant is not only cooperating with the investigation but also undertakes to cooperate with the investigation as and when called for by the Investigating Officer. It is needless to state that if the presence of the Applicant if so required, the Investigating Officer shall intimate the Applicant with an advance notice of 7 days to enable the Applicant to attend the investigation.

9. In view of the above observations, Application stands allowed and following order is passed:-

ORDER

(i) In the event of the arrest, the Applicant – Suresh S/o Dattatraya Patil, in connection with C.R. No. 556 of 2024 dated 04.06.2024 registered with Thane Nagar Police Station for the offences punishable under Sections 420, 467, 468, 471, 276 r/w 34 of the Indian Penal Code and under Section 18(A)(i) r/w 17(B), 27(A) of the Drugs and Cosmetics Act, 1940 shall be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one or two sureties in the like amount;

(ii) Applicant shall attend on all dates of hearing unless specifically exempted by the Trial Court in writing by a speaking order;

(iii) Applicant shall report and participate in the investigation to the concerned I.O. in the Police Station as and when called for by the I.O;

(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;

(v) The Applicant shall not misuse his liberty in any manner or to influence any witnesses in any way; and

10. Infraction of the above conditions shall immediately entail cancellation of this order.

11. Application stands allowed and disposed.

[MILIND N. JADHAV, J.]