

Form No.HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Misc. No. 44858-B/2024

Amir Mahmood Vs. The State and another

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of parties or counsel where necessary
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24.09.2024 Mr. Muhammad Zikariya Sheikh, Advocate, with the
Petitioner.
Ms. Raheela Shahid, DDPP, with Hassan Haider Shah/
Deputy Drug Controller, and Ilyas/S.I.

Tariq Saleem Sheikh. – Through this application, the
Petitioner seeks pre-arrest bail in case FIR No.2590/2024 dated
02.07.2024 registered at Police Station Sabzazar, Lahore, for offences
under sections 23 & 27 of the Drugs Act, 1976 (the “Drugs Act”),
read with section 27 of the Drug Regulatory Authority of Pakistan
Act, 2012 (the “DRAP Act”).

2. The prosecution’s case is that M/s SSI Marketing
Network (“SSI”) is engaged in the manufacturing, retail, wholesale,
distribution, and marketing of various cosmetics and skincare
products through online stores and other traditional business modes.
On 30.03.2024, at about 11:00 a.m., the Drug Inspector of Allama
Iqbal Town, Lahore (the “Complainant”), inspected SSI’s
manufacturing facility in the presence of its CEO, Amir Mahmood
(the Petitioner), and witnesses. During the inspection, the
Complainant found five medicated cosmetics for which the Petitioner
could not produce a valid manufacturing licence under the Drugs Act.
These products were: Aneeza Gold Beauty Cream (20 grams), Brido
Luxury Gold Beauty Cream, Bio2You Cream, Clobetasol propionate
powder (Batch No. MLCL0020123), and Clobetasol propionate
powder (Batch No. MLCL0060522). The Complainant seized the
products, collected samples for testing and analysis, and prepared
Form-4 and Form-5, obtaining the Petitioner’s signature and thumb
impression. Following the inspection, SSI’s finished goods store was

sealed for violations of the Drugs Act and the DRAP Act. The Drug Testing Laboratory (DTL) subsequently reported that the products were unregistered and contained allopathic drugs as active ingredients. FIR No.2590/2024, *supra*, was lodged after the approval of the District Quality Control Board.

3. The Petitioner's counsel, Mr. Muhammad Zikariya Sheikh, Advocate, contends that Ijaz Ahmad is SSI's actual owner/proprietor. The Petitioner is merely an employee and has no concern with the manufacturing process. He performs his duties under Ijaz's direction. Mr. Sheikh relies on an instrument dated 28.04.2023 to support this contention.

4. Mr. Sheikh further argues that the present case falls within the ambit of the Pakistan General Cosmetics Act 2023, and that the Drug Inspector lacks the authority to inspect business premises related to cosmetics or seize any products. He contends that the Petitioner has been falsely implicated in this case due to ulterior motives. The Petitioner has already joined the investigation and is not required by the police for further probe. Therefore, he may be admitted to pre-arrest bail.

5. The Deputy District Public Prosecutor has vehemently opposed this application. She contends that the Petitioner is a partner in SSI and liable for all its acts and omissions. She asserts that the Petitioner and his co-accused manufactured the seized items without a valid licence, and the DTL report has confirmed that the items were unregistered. She further argues that the Drug Inspector has jurisdiction under section 18 of the Drugs Act to conduct the raid and inspect medicated cosmetics to ensure compliance with the Drugs Act and the DRAP Act. She has prayed for the dismissal of this bail application.

6. We have heard the learned counsel and examined the record. We first consider whether the Complainant/Drug Inspector lawfully conducted the raid at the SSI's premises.

7. The Drugs Act is a special law that regulates the import, export, manufacture, storage, distribution, and sale of drugs.¹ Section 17 of the Act empowers the Federal or Provincial Government to appoint qualified individuals as Federal or Provincial Inspectors within designated local limits to enforce the Act. Section 18 outlines the powers conferred upon these Inspectors, while section 19 details the procedures they must follow when seizing any drug or article under section 18.

8. Clause (a) of section 18(1) of the Drugs Act authorizes the Inspector, with the permission of the licensing authority, to inspect any premises where drugs are manufactured (including the plant), the manufacturing process, the means used for standardizing and testing the drugs, and all relevant records and registers. Clause (b) of section 18(1) empowers the Inspector to inspect any premises where drugs are sold, stocked, exhibited for sale, or distributed, along with the storage arrangements and all relevant records and registers. Clause (f) of section 18(1) allows the Inspector to seize any drug, materials used in its manufacture, and any other articles, such as registers, cash memos, invoices, and bills, which he has reason to believe may provide evidence of an offence punishable under the Drugs Act, or the rules made thereunder. Clause (h) of section 18(1) grants the Inspector the authority to lock and seal any factory, laboratory, shop, building, storehouse, or godown, or any part thereof, where any drug is being manufactured, stored, sold, or exhibited for sale in violation of the said Act or the rules.

9. In 2012, Parliament enacted the DRAP Act (XXI of 2012) to establish the Drug Regulatory Authority of Pakistan (“DRAP”)² “to provide for effective coordination and enforcement of the Drugs Act and to bring harmony in inter-provincial trade and commerce of therapeutic goods, and to regulate, manufacture, import, export, storage, distribution, and sale of therapeutic goods.” Section 7 of the Act describes the DRAP’s powers and functions. Section 27(1)

¹ Preamble of the Drugs Act, 1976.

² Parliament enacted this Act pursuant to the resolutions under Article 144 of the Constitution passed by the Provincial Assemblies of Khyber Pakhtunkhwa, Punjab and Sindh.

states that the offences shall be such as specified in Schedule-III, and section 27(2) provides that the prohibitions specified in Schedule-II shall be punishable in accordance with Schedule-III.

10. Schedule-V of the DRAP Act outlines the powers of Inspectors. Clause (6) of Schedule-V stipulates that the Provincial Inspector, upon finding any contravention of the DRAP Act or the Drugs Act, shall, unless otherwise directed by the Board, always refer the case to the Provincial Quality Control Board³ and seek orders regarding the action to be taken in response to such infringements. Section 29 states that the Inspector shall take cognizance of offences in the manner specified in Schedule-IV.

11. The Drugs Act defines the term “drug” in section 3(g) and the DRAP Act in section 2(xii) read with Schedule-I. The DRAP Act separately defines “medicated cosmetics” in Schedule-I. According to it, they include “cosmetics containing drugs and are defined as articles containing active drug ingredients intended to be rubbed, poured, sprinkled, or sprayed on, or introduced into, or otherwise applied to the human body or part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of any such articles; except that such term shall not include soap.”

12. Parliament has also enacted the Pakistan General Cosmetics Act, 2023 (XLIII of 2023), to regulate the quality, standard, labeling, packing, manufacturing, storage, distribution, and sale of general cosmetics. Section 2(j) of the Act defines “general cosmetic” to mean “any substance intended to be used to clean, improve or change of complexion of skin, hair, nails or teeth and include the beauty preparations for make-up, perfume, skin cream, skin lotion nail polish, nail paint, soap, shampoo, shaving cream, gel, sun care and deodorant also include any article intended for use as a component of general cosmetics or any other item declared by the

³ The Punjab Government has framed the Punjab Drugs Rules 2007 while exercising powers under section 44 of the Drugs Act. Rule 3 describes the constitution of the Provincial Quality Control Board. Rule 4(1) authorizes the PQCB to constitute a committee in a district to be known as the District Quality Control Board. Rule 4(4) states that the DQCB shall perform its functions under general supervision and subject to the control of the PQCB.

[Pakistan General Cosmetics Regulatory] Authority for the purposes of this Act.”

13. Thus, the legal framework distinguishes between “medicated cosmetics” and “general cosmetics.” The DRAP Act governs the former, while the latter falls under the Act of 2023. There is no overlap between these two categories.

14. In the present case, the Complainant seized the following five medicated cosmetics from the SSI’s premises: (i) Aneeza Gold Beauty Cream (20 grams), (ii) Brido Luxury Gold Beauty Cream, (iii) Bio2You Cream, (iv) Clobetasol propionate powder (Batch No. MLCL0020123), and (v) Clobetasol propionate powder (Batch No. MLCL0060522). The DTL found ammoniated mercury⁴ in two items and clobetasol propionate⁵ in the other three. As adumbrated, the Provincial Drug Inspector has the authority to inspect the premises where he finds any contravention of the Drugs Act or the DRAP Act. The Petitioner’s contention that the raid on SSI’s factory is illegal is misconceived and therefore rejected.

15. The Petitioner asserts that he is merely an employee of SSI and that Ijaz Ahmad is the actual owner of the business. However, the public prosecutor disputes this claim, citing the Partnership Deed dated 28.04.2023, which states that both individuals entered into a partnership to form the firm. She also highlights clause 7 of the deed, which specifies that they would share the firm’s profits and losses equally. In response, Mr. Sheikh contends that Ijaz Ahmad contributed the entire capital of Rs. 5,000,000/- to the firm, while the Petitioner’s role was limited to operational services.

16. In business law, a partnership is a formal arrangement between two or more individuals to operate a business and share its profits and liabilities. There are various types of partnerships, each defined by the partners’ roles, responsibilities, and liabilities. When

⁴ Ammoniated mercury is used to treat impetigo, psoriasis, minor skin infections, and other skin disorders. Its excessive use may increase the chance of absorption through the skin and the risk of mercury poisoning.

⁵ Clobetasol propionate is used on skin to treat eczema and psoriasis. It reduces swelling, redness, itching and rashes caused by these skin conditions. It is a type of topical steroid medication. (<https://my.clevelandclinic.org/health/drugs/19019-clobetasol-ointment>)

no fixed period is prescribed for the partnership's duration, it is considered a partnership at will. Conversely, when the partners establish a fixed duration for the partnership, it ends upon the expiration of that period. If the partners continue the partnership after the fixed period has expired, it transitions into a partnership at will.

17. A Partnership of Skill and Capital, also known as a Partnership of Labour and Capital, is a business arrangement where one partner provides the financial capital, and the other contributes skill or expertise to manage the business. This mutually beneficial structure allows each partner to contribute what they possess in abundance. The capitalist partner supplies the necessary funds but typically does not engage in daily operations, while the working partner manages the business using their skills and knowledge.

18. The profit-sharing arrangement is based on the contributions of both partners and is defined in the partnership agreement. Due to their financial risk, the capitalist partner usually receives a portion of the profits proportionate to their investment. On the other hand, the working partner earns their share based on the value of their expertise and labour. These terms vary, and the agreement can allocate profits in any way that reflects the contributions and roles of the partners. This type of partnership allows both parties to focus on their strengths: the capitalist providing financial backing and the working partner managing the business. The clear division of responsibilities often leads to more efficient operations.

19. In Pakistan, partnerships are governed by the Partnership Act 1932 and, where it is silent, by the Contract Act 1872. Section 4 of the Partnership Act defines a "partnership" as "the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all." Consequently, a partnership must be formed to conduct a business, which must be legal. "Business" encompasses every trade, occupation, and profession⁶ and is not undertaken for personal pleasure. The essential feature of a

⁶ Clause (b) of section 2 of the Partnership Act, 1932

partnership is the concept of mutual agency, where each partner acts as an agent for the others in business matters. In *Cox v. Hickman*, (1860 8 HL Cas 268), Lord Cranworth held that mutual agency is the definitive test for determining the existence of a partnership. This characteristic allows any partner to manage the partnership on behalf of all the others.

20. Section 5 of the Partnership Act stipulates that the partnership relationship arises from a contract, not status. Section 6 provides that in determining whether a group constitutes a firm or whether an individual is a partner, the actual relationship between the parties must be evaluated based on all relevant facts. Explanation 1 clarifies that sharing profits or gross returns from jointly held property does not automatically establish a partnership. Explanation 2 further states that receiving a share of business profits or payments linked to profits does not make someone a partner by itself. In particular, the following payments do not create a partnership: (a) by a lender of money to persons engaged in or about to engage in any business, (b) by a servant or agent as remuneration, (c) by the widow or child of a deceased partner, as an annuity, or (d) by a previous owner or part-owner of the business, as consideration for the sale of goodwill or a share thereof.

21. Section 6 of the Partnership Act appears to be based on the ruling of Jessel, M.R. in *Ross v. Parkyns*, [1871 R. 155]. He stated: “It is said (and about that there is no doubt) that the mere participation in profits *inter se* affords cogent evidence of a partnership. But it is now settled by the cases of *Cox v. Hickman*, *Bullen v. Sharp* and *Mallwo, March & Co. v. Court of Wards*, that although a right to participate in profits is a strong test of partnership, and there may be cases whereupon a simple participation in profits there is a presumption, not of law, but of fact, that there is a partnership, yet whether the relation of partnership does or does not exist must depend upon the whole contract between the parties, and that circumstance is not conclusive.”

22. Given the above, merely describing the parties to a deed as “partners” does not by itself establish a partnership. In **Majooji Moosaj v. Tayebali and others** (AIR 1933 Sind 210), the High Court ruled that even if parties describe themselves as “partners” in a written agreement, this does not constitute a partnership if their actual relationship is otherwise. Similarly, an agreement that purports to be something else may still be deemed a partnership if its essence and substance reveal such a relationship because the law considers the true nature of the agreement rather than its form. Likewise, in **Karnidan Sarda and another v. Sailaja Kanta Mitra and another** (AIR 1940 Pat. 683), it was held that the provisions of a document, as interpreted through proper legal analysis, determine its true character rather than the description given by the parties.

23. In **Raghunath Sahu and another v. Trinath Das and others** (AIR 1985 Orissa 8), the High Court observed that the word “partner” is often used in a specific deed in a loose sense, without regard to the essential elements of a legal partnership. A statement in a document that “nothing therein contained would constitute the parties as partners” will not necessarily prevent them from being considered partners under the law. Likewise, a mere declaration that the parties are partners does not automatically establish a legal partnership. Therefore, the existence of a partnership must be determined by considering all relevant facts and the three essential elements of a partnership, viz., (i) there must be an agreement between all concerned persons, (ii) the agreement must be to share the profits of a business, and (iii) the business must be carried on by all or any of the persons acting on behalf of all.

24. In **The Province of West Pakistan v. G. V. Rattanchand Pir Mahfooz (a firm)**, [PLD 1958 (W.P.) Karachi 251], the defendant, Pir Mahfooz, contended that no firm existed under the name “Messrs G. V. Rattanchand Pir Mahfooz.” He argued that Messrs. G. V. Rattanchand & Co. was a separate entity conducting business at Boulton Market, while his firm, Pir Mahfooz, operated independently. Consequently, he claimed that the suit as filed was not maintainable.

The High Court rejected this argument, emphasizing that the determination of a partnership's existence depends on the actual intent and conduct of the parties, as demonstrated by the facts of the case. While the right to share in the profits of a business is a strong indicator of a partnership, the Court clarified that the real test lies in the parties' intentions and behaviour, not solely in profit-sharing arrangements. Documents on record showed that Pir Mahfooz and G. V. Rattanchand referred to each other as partners. Additionally, correspondence between them and the Government revealed that they presented themselves as acting jointly, with one acting as an agent for the other – an essential element of partnership law. The defendant did not dispute that the actions of either party in their dealings with the Government would bind both parties, which further supported the existence of a partnership. Based on this evidence, the Court held that a firm under the name "G. V. Rattanchand Pir Mahfooz" existed.

25. In *Essa E. H. Jaffer v. Nishat Ltd.* [PLD 1962 (W.P.) Kar 603], the question arose whether the document in issue constituted a genuine partnership deed and whether, in pursuance thereof, the parties had become partners in the operation of two buses. The Court held that it is permissible for parties to structure profit-sharing in any manner they choose. For instance, one partner may agree to receive a fixed annual or monthly sum rather than a variable share of the actual profits. It further noted that it is not essential for establishing a partnership for the parties to agree to share losses. The determination of whether a partnership exists in any given case depends on the specific facts and circumstances, as per section 6 of the Partnership Act. In the case under discussion, the agreement (Exh.6) between the parties explicitly referred to itself as a "deed of partnership," and the parties described themselves as "working partner" and "financing partner." Further, the two buses were to be operated "on behalf of this firm." However, upon reviewing the agreement, the High Court found that the parties never intended to form a genuine partnership. The actual intent behind the arrangement was for the respondent to advance a loan of Rs. 20,000/- to the appellant-defendant, with an exorbitant interest rate of 48%. This

arrangement was cleverly disguised as a partnership to circumvent the legal restrictions of the Sind Money Lenders Act and the Usurious Loans Act.

26. In the present case, the existence of the Partnership Deed dated 28.04.2023 and the right of the Petitioner to participate in profits strongly indicates that the Petitioner and Ijaz Ahmad were partners in the firm. The Petitioner has not brought any material on record so far that may suggest he is not a partner in the firm.

27. Section 23(1)(a)(vii) of the Drugs Act prohibits any person from exporting, importing, manufacturing for sale, or selling any drug that is either unregistered or not in compliance with registration conditions. Section 27 prescribes punishment for such offences. On 30.03.2024, the Complainant discovered five varieties of medicated cosmetics at the SSI's factory, regarding which the Petitioner could not produce a manufacturing licence at the time of the raid or any time afterward. The Complainant seized those products vide Form 5 in the Petitioner's presence, who signed and thumb-marked it. The DTL later confirmed that they were unregistered and contained allopathic drugs as active ingredients. On a tentative assessment of the available record, there is sufficient incriminating material against the Petitioner.

28. There is abundant case law that apprehension of arrest of an accused being for an ulterior motive, such as humiliation and unjustified harassment, is a *sine qua non* for pre-arrest bail. Reliance is placed on Muhammad Safdar and others v. The State (1983 SCMR 645), Zia-ul-Hassan v. The State (PLD 1984 SC 192), Ajmal Khan v. Liaqat Hayat and another (PLD 1998 SC 97), Rana Abdul Khaliq v. The State and others (2019 SCMR 1129). The Complainant is a Drug Inspector performing duties in the area where the SSI's factory is located. The Petitioner's counsel has been unable to satisfy us that he had any reason to falsely implicate the Petitioner in the case.

29. This bail application has no merit and is, therefore, dismissed.

30. The observations in this order regarding the factual aspects of the case are tentative. The learned trial court shall adjudicate the case strictly on its merits, based solely on the evidence presented, without being influenced by these observations.

(Muhammad Amjad Rafiq)
Judge

(Tariq Saleem Sheikh)
Judge

Ahsan

Signed on _____

Approved for reporting

(Muhammad Amjad Rafiq)
Judge

(Tariq Saleem Sheikh)
Judge