

Dinesh Sharma vs State Of Himachal Pradesh on 27 September, 2023

Author: Virender Singh

Bench: Virender Singh

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA .

CrMP(M) No. : 2200 of 2023

Reserved on : 05.09.2023
Decided on : 27.09.2023

Dinesh Sharma

...Applicant

of
Versus

State of Himachal Pradesh
rt

...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge. Whether approved for reporting?1 For the applicant : Mr. Naresh Jain and Ms. Shweta Joolka, Advocates.

For the respondent : Ms. Leena Guleria, Deputy Advocate General, assisted by Mr. Lovely Thakur, Drugs Inspector.

Virender Singh, Judge.

Applicant-Dinesh Sharma has filed the present application, under Section 439 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC'), for seeking, his release on bail, in a case, under Sections 18(a)(i), 18 (c) Whether Reporters of local papers may be allowed to see the judgment? Yes.

read with section 17B and 36 (AC), punishable under Section 27(c) of the Drugs and Cosmetics Act, 1940 .

(hereinafter referred to as 'the Act'), pending in the Court of learned Additional Sessions Judge, Nalagarh, District Solan, H.P.

2. According to the applicant, he is an innocent of person and has falsely been arrested, in this case. As per him, on 22nd November, 2022, at Baddi Police Barrier, rt vehicle No. UP-80FC-7530 was searched. During the search, spurious drugs, namely, (i) Zerodol TH4 (1,90,100 tablets), amounting to 39,73,090/-, manufactured under the name of M/s IPCA Laboratories Ltd., Sikkim;

(ii) Roseday 10 tablets (28,950 tablets), amounting to 3,65,638/-, manufactured under the name of M/s USV Private Ltd., Solan, H.P.; and (iii) Montair 10 tablets (50,720 tablets) amounting to 10,76,684/-, manufactured under the name of Cipla Ltd., Sikkim, were recovered from accused-Mohit Bansal, as, he could not produce any licence or requisite authorization, under the Act.

3. As per the averments made in the application, on 22nd November, 2022, during the course of search of the .

godown of accused-Mohit Bansal, spurious drugs, namely, Montair 10 Tablets; Atorva 10 Tablets; Roseday 10 Tablets;

and Zerodol TH4 Tablets, in heavy quantity, alongwith huge stock of loose tablets, which were identified and of disclosed by accused-Mohit Bansal, as Calcium and Torsemide Tablets and active raw material as Amlodipine rt alongwith excipients PVPK30, Plain and Printed foils and packaging material, used for manufacturing of spurious drugs, were found.

4. It has been further averred that at the time of recovery from the godown, accused-Atul Gupta and accused-Vijay Kaushal were also present there. Their statements were recorded and they were arrested on 22 nd November, 2022. Presently, both of them are stated to be in judicial custody. From their statements, it was found that accused-Atul Gupta was looking after the work of manufacturing of spurious drugs, in the presence of accused-Mohit Bansal.

5. During remand, they had disclosed the name and address of the manufacturing premises, where, . manufacturing and packaging of spurious drugs was done.

The said premises, as per the information, is M/s Trizal Formulation, Industrial Area, Baddi. When, search of the said premises as conducted, huge quantity of allopathic of spurious drugs (loose tablets), raw material, scrap of foils and other material of spurious drugs was recovered.

rt All the material was taken into possession.

6. It is the further case of the applicant that accused-Mohit Bansal also disclosed about the wholesale licence and their wholesale shop in Agra, from where, they used to distribute the spurious medicines, allegedly manufactured at M/s Trizal Formulations, to various firms, upon which, raid was conducted there on 25 th November, 2022, and a huge stock of allopathic medicines, alongwith other material, was recovered.

7. On 27th November, 2022, residences of accused-

Mohit Bansal and accused-Atul Gupta, at Solan, were searched, from where, huge stock of loose tablets, packaging material and raw material was recovered.

8. Thereafter, on the basis of the disclosure statements made by accused-Mohit Bansal and accused-

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Atul Gupta, the godown situated in Baddi, was searched, from where, huge stock of huge compressed tablets was recovered.

9. On the basis of the above facts, the Drugs of Inspector filed the complaint against accused persons, namely, Atul Gupta, Mohit Bansal, Vijay Kaushal and rt Naresh Kumar.

10. These facts have been mentioned by the applicant in order to show that he has no role, whatsoever, in the commission of the said offences. Drugs were not recovered from him and he was not found present at any place, where, raids were conducted.

11. It is the further case of the applicant that on 15th June, 2023, accused-Mohammad Idreesh was arrested. During his interrogation, he has disclosed that he had procured the raw material of spurious drugs from the applicant, who is the Director of M/s Stevels Pharma Ltd., Mohali.

12. As per the applicant, he has been roped in, in the present case, on the basis of the accused-Mohammad .

Idreesh. The said statement, according to the applicant, is not admissible in evidence and the same cannot be considered against him.

13. It is the further case of the applicant that Drugs of Inspector, Baddi, served a notice upon him, on 21 st June, 2023, which was duly replied by him. In the reply, he has rt mentioned the fact that he is working as Commission Agent with M/s S.V. Pharmaceuticals. As per the said reply, according to the applicant, it was transpired that delivery of two consignments was made in January, 2022 and February, 2022, via car, to accused-Mohammad Idreesh, at his residence in Jagranda, B3, Omaxe, Baddi.

14. The applicant has submitted a copy of his licence, records of transport, purchase order, Memorandum of Articles of M/s Stevel Pharma Limited, Product Permissions and Manufacturing

Drugs Licence of M/s Stevel Pharma Limited.

15. So far as the consignment, which was delivered to accused-Mohammad Idreesh is concerned, according to the applicant, the same was done in the capacity of Commission Agent of the firm and at the instance of the .

firm. The applicant has also placed on record the bank statements, in this regard, alongwith his application.

16. Re-asserting the fact that he is working as Commission Agent, as such, he used to supply the of material, through proper invoices, he has also highlighted the fact that none of the main accused, in the present case, rt has disclosed his name, in order to show that he has falsely been implicated, in this case.

17. As per him, he has no concern with the manufacturing and distribution/sale of spurious drugs. In this regard, he has relied upon bare provisions of the Act, as contained in Sections 18(a)(i) and 18(c).

18. According to the applicant, there is nothing on the record to show that the material supplied by him, was adulterated, mis-branded or spurious, as such, he has committed no offence.

19. It is the specific stand of the applicant that the material supplied by him, does not come within the definition of 'prohibited drugs', as such, rigors of Section 36 of the Act, have no applicability, in this case.

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20. In addition to this, the applicant has also asserted the fact that the substance, allegedly, supplied by him, is bulk food substance, which comes under the definition of 'food', as per Section 3 (1) (j) of the Food Safety of and Standards Act, 2006. The said substance has specifically been mentioned as 'mineral' at serial No. B (1) rt

(iii) of the Food Safety and Standards Act, 2006.

21. This fact has been highlighted by the applicant in order to show that as per Schedule K of Rule 123 of the Act, the same is exempted, both being used in food manufacturing and drug manufacturing.

22. Apart from this, learned counsel appearing for the applicant, has given certain undertakings, for which, the applicant is ready to abide by, in case, he is ordered to be released on bail.

23. The applicant has earlier tried his luck by filing bail application before the Court of learned Additional Special Judge, Nalagarh, however, his bail application has been dismissed, vide order, dated 8th August, 2023.

24. On the basis of the above facts, the applicant has prayed for the relief, as claimed in the application.

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25. When put to notice, the State, through Drugs Inspector, has filed the reply/status report, in which, preliminary submissions have been made, that the complaint against the applicant and seven other accused of persons, for contravention of Sections 18 (a) (i) read with Section 17B, punishable under Section 27 (c) of the Act, is rt pending.

25.1. As per the stand of the respondent, the manufacturing of drugs involves different processes, such as, making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug with a view to sale or distribute.

25.2. The nexus of 9-10 suspects/accused persons has been identified, till date, as per the stand taken in the reply, and they had conspired with each other for performing different processes and activities, for the purpose of manufacturing and sale of spurious drugs.

25.3. A huge stock of spurious drugs worth 1.74 crores is stated to have been recovered from different locations. As per the reply, the applicant is involved in purchase and supply of raw material for manufacturing of .

spurious drugs, in association with other accused persons.

He was arrested on 25th July, 2023 and the case is still under investigation for verifying other sources of raw material and involvement of other aspects.

of 25.4. On merits, it has been submitted that on 22 nd November, 2022, huge stock of spurious medicines was rt recovered from the vehicle of accused-Mohit Bansal, details of which have also been mentioned by the applicant, in his bail application.

25.5. Re-iterating the factual position, as mentioned in the bail application, it is the further case of the respondent that on 21st June, 2023, Drugs Inspector, alongwith accused-Mohammad Idreesh and police official had visited the premises of M/s Stevel Pharma, Plot No. 576, Industrial Area, Phase 9, Mohali, where, accused-

Mohammad Idreesh had identified applicant-Dinesh Sharma as the person, who provided raw material for manufacturing of the spurious drugs. The applicant had taken a stand that he had sold the raw material to accused-Mohammad Idreesh and requested two days' time to submit the record. Therefore, notice, under Section 22 .

(1) (cca) of the Act was issued to the applicant to provide complete sale and purchase record. But, the applicant has neither replied to the said notice nor joined the investigation. Ample opportunities were given to him to do of the needful, but, when he failed to do so, then the arrest warrants were

obtained and he was arrested on 25 th July, rt 2023. His mobile phone was taken into possession alongwith hard drives and the same were sent to State Forensic Science Laboratory, Junga, for forensic analysis, the report of which is still awaited.

25.6. It is the further case of the respondent that during the custody, the applicant has disclosed that he is graduated in Commerce and has complete knowledge about the raw material and finished goods and as such, he started dealing with accused-Mohammad Idreesh in raw material, finished formulations, from the year 2021, when, he was Director in M/s Stevels Pharma, Mohali. As per the reply, the applicant has disclosed that he was working with accused-Mohammad Idreesh as third party manufacturer.

25.7. It is their further case that on 27 th July, 2023, the premises of M/s SV Pharmaceuticals were inspected .

and it was disclosed by the authorized signatory of M/s SV Pharmaceuticals that the raw material 'Calcium Citrate Maleate and Acrypol' was supplied to M/s Heaven Formulation, Parwanoo and M/s MH Pharma, Agra, of through applicant-Dinesh Sharma.

25.8. The said authorized signatory of M/s SV rt Pharmaceuticals, namely, Satinder Deep Singh, has made a statement, under Section 164 CrPC, disclosing therein, that at the request of applicant-Dinesh Sharma, M/s SV Pharmaceuticals supplied raw material 'calcium citrate maleate' to M/s Heaven Formulation, Parwanoo, District Solan, upon which, Abhinay Chaurasia, proprietor of M/s Heaven Formulation, Parwanoo, has joined the investigation and has disclosed that he has never procured any raw material from M/s SV Pharmaceuticals and that he has neither made any purchase order for raw material to applicant-Dinesh Sharma nor has received any material from him. His statement was also got recorded, under section 164 CrPC. From this statement, as per the respondent, it has been confirmed that applicant-Dinesh Sharma has diverted the raw material in association with .

accused-Mohammad Idreesh for manufacturing of spurious drugs at M/s Trizal Formulations.

25.9. It has been pleaded in the reply, by the respondent, that as per the bank statements of the of applicant, he has received payments from M/s SV Pharmaceuticals, rt which were made by accused-

Mohammad Idreesh. The applicant has not produced any purchase order of M/s Heaven Formulation, Parwanoo, District Solan, for procurement of calcium citrate maleate, Acrypol, which is used in manufacturing of spurious drugs, and the drugs having calcium citrate were recovered from the godown of accused-Mohit Bansal, which were supplied by accused-Mohit Bansal, through various sale invoices.

25.10. As per the stand of the respondent, applicant-

Dinesh Sharma was not having any drug licence for purchase of raw material from M/s SV Pharma, Mohali.

He has diverted the raw material for manufacturing of spurious medicines in association with accused-

Mohammad Idreesh and has not submitted the complete purchase and sale record of the same.

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25.11. The raw material purchased by applicant-

Dinesh Sharma and accused-Mohammad Idreesh for manufacturing of spurious drugs was identified by Government Analyst, vide Report No. CHD/LS/2022- of 23/308, dated 2nd January, 2023, in the sample of calcium citrate, coded as Mohit/19, which was taken during raid at rt the residence of accused-Mohit Bansal. The test and analysis reports of all the samples were received from the Government Analyst, RDTL, Chandigarh and it was found that the samples, coded as Mohit/01, Mohit/02, Mohit/12, Mohit/23 and Mohit/25 are not of standard quality.

25.12. It has further been submitted by the respondent that M/s Cipla Ltd has also informed the Drugs Inspector that the drugs manufactured by accused-Mohit Bansal and other accused persons, which have been labelled to be manufactured by M/s Cipla Ltd., are spurious in nature.

25.13. It has also been mentioned in the reply that applicant-Dinesh Sharma has not joined the investigation, even after giving him ample opportunities, to do so, and was arrested after obtaining arrest warrants. Therefore, it has been apprehended that in case the applicant is .

released on bail, he may not be available for the trial and may also indulge in similar activities again.

25.14. As per the reply, the investigation, with regard to the involvement of other accused persons, sale of of spurious drugs and source of purchase of raw material used in manufacturing of spurious drugs, in the present rt case, is still under process.

26. On the basis of the above facts, a prayer has been made to dismiss the bail application.

27. Alongwith the bail application, the applicant has annexed the reply to notice, dated 21 st June, 2023, served upon him, by the State Drugs Controller, Baddi, District Solan, H.P., in which, he has termed himself to be the Commission Agent only with M/s S V Pharmaceuticals, E21, Ground Floor, Ansal Golf Link-1, Sector 114, Kharar Punjab. According to him, he has supplied the material, which is, reproduced as under:

"a. M/s S V PHARMACEUTICALS E21, Ground Floor, Ansal Golf Link-1, Sector 114, Kharar Punjab Sales Invoice No. 21-22/GST/37, Dated : 29-01- 2022 for Rs. 42480/- Product Name Calcium .

Citrate Maleate Qty. 100 kg (Pac 25 kg) of M/S Heaven Formulations Khasra NA 551/3 Shivloti Industrial Area Parmano, HP Purchase Detail :

Party Name	Bill No	Date	Amount
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Ambay Pharmaceuticals, Nalagarh	of GST- 1891	Jan.28, 2022	20650.00
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Delivered By (Car) to Mr. Idrish Mohmmad to his rt Residents in Jagranda B3 OMAX Baddi b. M/s S V PHARMACEUTICALS E21, Ground Floor, Ansal Golf Link-1, Sector 114, Kharar Punjab Sales Invoice No. 21-22/GST/41, Dated : 23-02- 2022 for Rs. 21476/- Product Name Acrypol 971P Make Coral Qty. 20 kg Standard Pack of M/S Heaven Formulations Khasra NA 551/3 Shivloti Industrial Area Parmano, HP Purchase Detail :

Party Name Bill No Date Amount Corel Pharma 21-22/ 10.02. 18762.00 Chem, Mehsana, 08453 2022 Gujarat Delivered By (Car) to Mr. Idrish Mohmmad to his Residents in Jagranda B3 OMAX Baddi c. Mail PO of Prachi Bansal mhpharmaagr@gmail.com Date : 02.03.2022 Injection Name Hepmet With MRP 250 Marketed by MH Pharma

1. M/s S V PHARMACEUTICALS E21, Ground Floor, Ansal Golf Link-1, Sector 114, Kharar Punjab Sale Invoice No. 21-22/GST/45, Dated :

28-03-2022 for Qty. 20790/- Amount Rs. 1,22,661, E-Way Bill No. 3214 2904 0977, Date : 28-03-2022.

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2. Sale invoice No. 22-23/GST-2 Date 15-04-2022 Product Name Ampoule (Empty) 10 ml Qty (1) 20,790, (2) 4,410 to M/S Parex Pharmaceuticals Pvt Ltd. D-145 Sec. 73 Mohali Amount : 26019.

Total number of Empty Ampules Qty. 25200.

Purchase Detail :

of Party Name Bill No Date Qty. Amount Indian Scientific 628 19-02- 50610 291303/-

Glass rt Industries, Vapi, Gujarat	2022	pcs.
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d. M/s S V PHARMACEUTICALS E21, Ground Floor, Ansal Golf Link-1, Sector 114, Kharar Punjab Sales Invoice No. 22-23/GST/3, Dated :

18-04-2022 for Rs. 7,92,960, Product Name Hepmet 10 ml Inj Qty. 20,000 Nos of M/s M.H. Pharma 3-546/547/3 Hing Ki Mandi, Hojri Bazar, Agra, (UP) Purchase Detail LR No. 10506, Date : 168-04-2022 New A ONE Transport Services Vill. Daria, Near Guru Nanak, Dharam Khanda, Railway Station Road (Chandigarh)."

28. Much reliance has been placed on the fact that the material supplied was Calcium Citrate Maleate, by arguing that the said material does not fall within the purview of the Act and the same has been mentioned in Food Safety and Standards Act.

29. If this fact is considered, in the light of the .

stand, as taken by the Drugs Inspector, that the raw material Calcium Citrate Maleate, Acrypol, can be used for manufacturing of spurious drugs and even, the drugs having calcium citrate were recovered from the godown of of accused-Mohit Bansal, even then, this aspect will be proved or probabalized during the trial. At this stage, the rt said argument of the learned counsel appearing for the applicant, cannot be accepted, as, it would amount to pre-

judging the case of the prosecution.

30. Considering the stand of the Drugs Inspector with regard to the criminal conspiracy between the accused persons, including the applicant, with the alleged recovery of the spurious drugs, this Court is of the view that releasing the applicant on bail will not only encourage other drug manufacturers or suppliers of the raw material, to do the pilferage of the material, but, also give a wrong signal to the society that after committing such a heinous crime, the applicant is still moving freely in the society.

31. While deciding the question of bail, a delicate balance between the individual liberty and the larger .

interest of the society, has to be maintained.

32. The recovery of big haul of the spurious drugs speaks voluminously about the seriousness of the offence.

As per the test and analysis reports of all the samples, the of samples, coded as Mohit/01, Mohit/02, Mohit/12, Mohit/23 and Mohit/25 were not of standard quality. In rt addition to this, M/s Cipla Ltd. has also informed the Drugs Inspector that the drugs manufactured by accused-

Mohit Bansal and labelled to be manufactured by M/s Cipla Ltd., are spurious in nature.

33. Moreover, at this stage, there is nothing on the record to fulfill the conditions, as mentioned in Section 36 (AC) of the Act.

34. At the cost of repetition, it cannot be said, at this stage, that the applicant has not committed the offence and in case, he is released on bail, he may not commit the offence.

35. Considering all these facts, the applicant is not able to make out a case for grant of bail, at this stage.

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Hence, his bail application is rejected.

36. Any of the observations, made hereinabove, shall not be taken as an expression of opinion on the merits of the case and the learned trial Court shall decide of the matter uninfluenced by any of the observations made hereinabove. rt (Virender Singh) Judge September 27, 2023 (rajni)