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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 2002/2017**

Order reserved on: 25th October, 2017
Order pronounced on: 30th October, 2017

KRISHAN MURARI MEHRAPetitioner

Through: Mr. Mohit Chaudhary, Mr. Kunal,
Mr.Saurabh Nangia, Advocates.

Versus

STATERespondent

Through: Mr. Mukesh Kumar, APP for the State
with SI Harendra Singh, P.S. Kotwali,
Delhi.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 438 of the Code of Criminal Procedure (hereinafter referred "Cr.PC."), the petitioner seeks **grant of Anticipatory Bail** in FIR No. 239/2017 under Sections 18/27 Drugs and Cosmetics Act registered at Police Station Kotwali, New Delhi. Status report is on record.
2. The brief facts of the case are that complainant Vishal Sachan of the Drugs Control Department F-17, Karkadooma Delhi on 07-09-2017 along with other witnesses inspected the premises of a small protein supplement shop "M/s Ashish Medicos", situated at Shop No. 1704 G. F, Bhagirath Palace, Chandni Chowk, Delhi in the presence of the petitioner who was stated to be the Proprietor-cum-

Person Incharge and responsible for the conduct of day to day business of the firm at the aforesaid premises. The petitioner had Food License 13315001000387 on Form "C" issued by Department of Food Safety, A-20, Lawrence Road Ind. Area, New Delhi. However, the petitioner held stocks for sale and distribution of various allopathic drugs without holding a requisite drug license as required by the Drugs and Cosmetics Act, 1940 and Rules made thereunder. The Drug Inspector seized and took into his possession all the 11 unlicensed items of drugs stocked for sale and distribution from the sale premises. Subsequently, on the complaint of the Drug Inspector Vishal Sachan the said case was registered and investigation was taken up.

3. Mr. Mohit Chaudhary, the learned counsel for the petitioner contended that towards the end of July, 2017 somebody representing himself to be a Medical Representative dealing in building supplements left a packet of tablets used by body builders at the shop of the petitioner as a trial for the customers of the petitioner. Though the petitioner was not interested in them he could not say no and 11 items including tablets were left in a packet in the shop. However, they were neither displayed nor advertised or offered for sale by the petitioner. The petitioner is 68 years of age, has clear antecedents and is willing to remain co-operative. Thus, it is prayed that the petitioner be granted anticipatory bail.

4. Per Contra, Mr. Mukesh Kumar, APP for the State vehemently contended that the petitioner is not liable to be granted anticipatory bail as he has been involved in the commission of a serious offence which is cognizable and non-bailable. He further stated that the accused may evade the process of law, threaten the complainant and may also tamper with the evidences being collected during investigation. It is, therefore, prayed that the bail of the applicant should be dismissed.
5. I have heard the learned counsel for the parties at length and perused the material on record.
6. **Section 18(a) in the Drugs and Cosmetics Act, 1940** talks about the Prohibition of manufacture and sale of certain drugs and cosmetics and states that :-

“From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—(a) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute— [(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious; (ii) any cosmetic which is not of a standard quality, or is misbranded, adulterated or spurious; (iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof [the true formula or list of active ingredients contained in it together with the quantities, thereof]; (iv) any drug which by means of any statement design or device accompanying it or by any other means, purports or claims any such disease or ailment, or to have any such other effect as may be prescribed; (v) any cosmetic

containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended; (vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder.”

7. Further, Section 28 of Drugs and Cosmetics Act, 1940 lays down the Penalty for non-disclosure of the name of the manufacturer and states that :-

“Whoever contravenes the provisions of section 18A shall be punishable with imprisonment for a term which may extend to one year, or [with fine which shall not be less than twenty thousand rupees or with both.]”

8. Section 18(c) of Drugs and Cosmetics Act, 1940 states that the

“Manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a license issued for such purpose under this Chapter: Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis: Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.”

9. Further Section 27(b)(ii) of Drugs and Cosmetics Act, 1940, states that :-

“Without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall 5[not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more:]”

10. It has been revealed from the investigation that in the store of the petitioner 11 items of drugs were found which the petitioner did not have any license for and these were subsequently seized by the complainant. Further, although the petitioner had protection from being arrested and was asked to join the investigation, he did not provide any details of source of supply of the said drugs. Off late, adverse health events resulting from Dietary Supplement Fraud (DSF) conducted for economic gain using dietary supplements have received increased recognition from agencies and industry as it is becoming a very common problem. There is a growing awareness that this issue represents a significant public health threat. With increasing consumption of supplements especially amongst the youth, there are increasing consequences wherein children taking adulterated dietary supplements contaminated with heavy metals can experience severe health effects. Misbranded dietary supplements have presented public health risks to consumers that were at least equal to, if not worse, than adulterated dietary supplements. The investigation is still in its embryonic stage, and thus the chance of the petitioner escaping the procedure

of law, tampering with the evidence or influencing the complainant and witnesses exists.

11. Reference may be made to the judgement of the Apex Court in *Bhadresh Bipinbhai Sheth v. State Of Gujrat* reported in (2016) 1 SCC wherein the principles for grant or refusal of anticipatory bail have been laid down, which are reproduced here as under:-

"(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.’’

12. Keeping in view the principles laid down by the Apex Court, the aforementioned Sections, facts and circumstances of the present case, the allegations against the petitioner are grave in nature, this Court does not deem it fit to grant discretionary relief of anticipatory bail to the petitioner. Accordingly, the petition for anticipatory bail stands dismissed.

13. Before parting with above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.

SANGITA DHINGRA SEHGAL, J.

OCTOBER 30, 2017

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HIGH COURT OF DELHI



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