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**IN THE HIGH COURT OF SINDH, KARACHI**

Present: **Mr. Justice Ahmed Ali M. Sheikh**  
**Mr. Justice Muhammad Karim Khan Agha**

**Bail Application No. 1545/2015**

Siraj Musani

V

The State

Date of hearing	15.02.2016
Date of Order	31.03.2016
Applicant	Through Mr. Shoukat Ali Shehroze, Advocate.
Respondent	Through Mr. Aslam Butt, DAS along with Inspector Shoukat Ali, FIA and Drug Inspector Khursheed Shaikh.

**ORDER**

**MUHAMMAD KARIM KHAN AGHA, J.** By this order we intend to dispose of the bail application filed on behalf of the applicant under section 497 Cr.P.C. praying therein to admit the applicant on post arrest bail in Crime No.50/2015 under section 23 & 27 read with Section 30, 33 and 34 of the Drugs Act, 1976 and 156 (1) (89) Customs Act, 1969 lodged at PS FIA Anti-Corruption Circle, Karachi.

2. The brief facts of the prosecution case are that on receipt of a complaint from the office of Provincial Inspector of Drugs dated 6-10-15 a raid was conducted by a joint FIA and Drug Inspection team at M/s. Romen Pharma at Plot No.F-666, Block 22, F.B. Industrial Area, Karachi and nearby Godown situated at F-674, Block 22, F.B. Industrial Area, Karachi. On reaching the above premises Siraj Musani Proprietor of Romen Pharma was found busy in getting manufacture, Toll manufacture, Pack/Repack, Sale/Sell and supplies/distribution unauthorizedly/illegally under the garb of Herbal Products/Food having no legal authority/without license of manufacturing, toll manufacturing

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packing/repacking, sale/sell, store, unwarranted/unregistered, smuggled Drugs:-

**Suspected Spurious/Counterfeit, Altered Drugs/Medicine.**

SR #	DESCRIPTION
1	Cystok (IPotassium Citrate)
2	Folivan (Folic Acid)
3	Folicon (Folic Acid)
4	Basopan (Samsmolytic-Analgesic)
5	Prosize
6	Zumega-B (Omega-3)
7	Pureman XXL
8	Dyes of Packing Machine
9	Perfection Plats
10	Dio Drop D
11	Marlin Tablet Choline Camps
12	Burnil Cream
13	Are-NIC Forte Tablet
14	OsMar Tablet (Calcium, Vitamin D, Magnesium & Zinc)
15	Infert EX Capsule
16	MenoGen
17	KufKold Table
18	Lose Tablet 1 Are-NIC Forte
19	Lose Tablet 2
20	Lose Tablet 3 yellow colour
21	Capsule 4 red colour (lose)
22	Buronol Cream
23	Painidone Tablets
24	Folic Acid Soft Gel
25	Blood Globin
26	Kufkold Tablet (Alu, Allu role for packing
27	Cystok (roll for packing)
28	Painidone Tablet (allu, allu roll for packing)
29	Lose Tablet 5 red colour
30	Lose Tablet 6
31	Lose Tablet 7
32	No.8 Crystals
33	Allu, Allu simple foil
34	Basopan (Allu, Allu Role for packing & others

3. During the raid a huge quantity of above suspected spurious/counterfeit, Sub-standard, smuggled, unwarranted / unregistered medicine/drug were recovered, and also recovered the packing/repacking materials, which were seized under proper seizure memo dated 06.10.2015 by Provincial Inspector of Drugs on Form-3 as well as drew the samples on Form-2 for the purpose of test analysis in accordance with the Drug Act 1976 on the spot in presence of witnesses. Since the quantity of drug products were huge and heavy packing machine were present both the premises was sealed by the Provincial Inspector of Drugs under section 18 (1) (h) Drug Act, 1976.

4. During the course of enquiry it transpired that the recovered drugs belonged to the accused firm/company M/s. Romen Pharma through its Proprietor Siraj Musani (the applicant) who used the premises for manufacturing, Toll manufacturing, Store, Sales/Sell and supplies/distribution of suspected spurious/counterfeit, sub-standard, unwarranted/unregistered, smuggled drugs products under the garb of Herbal products/food supplements and also used the nearby premises as Godown to store the above suspected spurious/counterfeit, sub-standard, smuggled, unwarranted / unregistered drugs.

5. According to the Prosecution case from the above facts it has been established that the accused firm/company M/s: Romen Pharma through its Proprietor Siraj Musani (the applicant) are involved in illegal/unauthorized manufacturing, toll manufacturing, store, sales/sell and supplies/distribution of suspected spurious/counterfeit, sub-standard, unwarranted / unregistered, smuggled drugs/products under the garb of Herbal Products/Food Supplements and have thereby committed the offence punishable under sections 23 and 27 read with sections 30, 33 and 34 of Drug Act, 1976 and section 156 (i)(89) of Customs Act, 1969.

6. The applicant had approached the Drug Court Sindh at Karachi for post arrest bail which was rejected by that Court by Order dated 06-11-2015 despite the test reports not being available and has now approached this Court for post arrest bail.



7. Since one of the offenses involved also concerned the Customs Act 1969 i.e. S.2 (S) and S.156 (1) (89) the applicant, after the rejection of his bail by the Drug Court, also approached the Special Judge (Customs and Taxation) Karachi for post arrest bail in respect of the offense which was under the Customs Act 1969 which was granted by order dated 4-12-15 largely on account of the fact that it was yet to be ascertained whether the case fell under Customs Act 1969 and as such it was a case for further inquiry especially as the alleged offense under the Customs Act was bailable

8. Learned counsel for the applicant submitted that the applicant is absolutely innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motives while the applicant has no nexus with the commission of the offence.

9. He further pointed out that no time of occurrence/raid is mentioned in the FIR, which creates heavy doubt in the prosecution story and no such correspondence were being made to higher authorities like Secretary of Health to request the FIA for any joint action, which also makes the case one of further inquiry.

10. Learned counsel further submitted that section 19 provides procedure for inspectors to act in what manner, under section 19(6), Provincial Drug Inspector on finding any contravention of this act, shall, unless the Board otherwise directs, always refer the case to the Provincial Quality Control Board and seek orders as to the action to be taken in respect of such contravention and according to the said section 19(6) he is bound to seek orders as to the action to be taken against any person/firm who contravenes any section of this Act, unless the Board otherwise directs. In this regard, the Drug Inspector relied upon the exemption given by Provincial Quality Control Board Sindh, Karachi vide Notification No. SQCB (6)/2953/83 dated 30.12.2005 issued under the Provisions of Section 11(5) (b) of the Drug Act, 1976, specific class of cases and allow Provincial Inspector of the Drug to submit complaints directly before the Court, without specific instructions of the board, but according to learned counsel the said notification did not allow the Drug Inspector to nominate accused names in the case without prior permission of the Board which the Drug

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Inspector did not have and as such his actions were unlawful and stood vitiated.

11. Learned counsel submitted that entire case of the prosecution depends upon the test report/analysis of the Provincial Drug Analyst and without the report of the drug analyst not a single offence is made out against the applicant and till now no report has been received.

12. It was further contended that the accused is running his business under the entire satisfaction of the Drug Regulatory Authority of Pakistan (DRAP), as such products of the accused were already in the knowledge of the said Drug Regulatory Authority and the prescribed fee for enlistment along with the product submitted with the Drug Regulatory Authority.

13. It was further pointed out that the concerned Ministry vide Notification dated 12.10.2015 exempted the alternate medicine selling and manufacturing up to 31.12.2015 as there was no mechanism, laboratory for the proper regulation and test.

14. He lastly contended that the case of the applicant is of further inquiry and for all the foregoing reasons the applicant should be enlarged on bail

15. On the other hand, learned counsel for the State argued that the recoveries were made from the applicant and the applicant has an assigned role in the commission of the offence to which he is connected, the test results have proved positive for a banned/unregistered/unlicensed substance in the seized and tested drugs and that the applicant is a habitual offender and as such he is not entitled to post arrest bail.

16. We have carefully perused the record, considered the law and the submissions (including written submissions of the applicant) of learned counsel at the bar and the case law cited by them.

17. At the outset we would like to make it clear that as per settled law on the grant of bail we have only made a tentative assessment of the material placed before us.

18. We are of the view that there was no malafide or ulterior motive behind the joint FIA and Drugs raiding team which raided both the applicant's premises. No evidence has been shown to this effect and these are simply bald allegations.

19. As to the procedure adopted by the FIA which acted upon a complaint received from the office of the Provincial Inspector of Drugs Karachi, which can be deemed to be the equivalent of an FIR under S.154 Cr.PC we see no illegality in such a procedure. i.e. a complaint was received, a joint team of FIA/Drug Inspectors raided the suspect premises where the suspect goods were found and tested in the presence of munshirs and proper recovery memo's were made on the spot. Thereafter the FIA continued with the investigation of the case.

20. In our view the main issue is whether (a) there is sufficient material to show prima facie that an offense has been committed under S.23 of the Drugs Act 1976, and (b) whether the applicant can be prima facie connected to the offense through the material on record.

21. As per the FIR it is alleged that the applicant has committed an offense under S.23 of the Drugs Act 1976. S.23 provides as under:

**"S.23 Import, manufacture and sale of drugs.--- (1)  
No person shall himself or by any other person on his behalf:--**

**(a) Export, import or manufacture for sale or sell:**

- (i) any spurious drug;
- (ii) any counterfeit drug;
- (iii) any misbranded drug;
- (iv) any adulterated drug;
- (v) any substandard drug;
- (vi) any drug after its expiry date;
- (vii) any drug which is not registered or is not in accordance with the conditions of registration.**
- (viii) any drug which, by means of any statement, design or device accompanying it or by other means, purports or claims to cure or mitigate any such disease or



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ailment, or to have any such other effect, as may be prescribed;

- (ix) any drug if it is dangerous to health when used in the dosage or with the frequency; or for the duration specified, recommended or suggested in the labelling thereof, or
- (x) any drug in contravention of any of the provisions of this Act or any rule;

**(b) manufacture for sale any drug except under, and in accordance with the conditions of, a license issued under this Act;**

**(c) sell any drug except under, and in accordance with the conditions of, a license issued under this Act;**

- (d) import or export any drug the import or export of which is prohibited by or under this Act;
- (e) import or export any drug for the import or export of which a license is required, except under, and in accordance with the conditions of, such license;
- (f) supply an incorrect, incomplete or misleading information, when required to furnish any information under this Act or the rules;
- (g) peddle, hawk or offer for sale any drug in a park or public street or on a highway, footpath or public transport or conveyance;
- (h) import, manufacture for sale, or sell any substance, or mixture of substances, which is not a drug but is presented in a form or a manner which is intended or likely to cause the public to believe it to be a drug;
- (i) sell any drug without having a warranty in the prescribed form bearing the name and batch number of the drug issued,--

(i) in the case of a drug manufactured in Pakistan, by the manufacturer holding a valid license to manufacture drugs and permission to manufacture that drug or by his authorized agent;

(ii) in the case of an imported drug, by the manufacturer or importer of that drug or, if the drug is imported through an indenter by such indenter;

(j) apply in incorrect batch number to a drug.

(2) Nothing in sub-section (1) shall apply to the manufacturer or subject to prescribed conditions, of small quantities of any drug for the purpose of clinical trial, examination, test, analysis or personal use."(bold added)

22. From a tentative review of the material before us it would appear that the premises and the Godown where the drugs were

seized and stored respectively were in the use of the applicant. 13 witnesses whose statements have been recorded under S.161 have also linked the applicant to the crime. That although when bail was denied to the applicant by the Drug Court the test results were awaited the test results have now been received and placed on file. These results reveal that the drug contained other substances as opposed to being merely herbal medicines. These reports show that nearly all the samples contained allopathic ingredients which the applicant had no license to manufacture or sell. These drugs were also unregistered and in the case of sildenafil is a banned drug in Pakistan which would even tend to suggest that it was illegally brought into Pakistan. Furthermore a letter dated 8-02-2016 (written after the date of the raid on the premises of the applicant by the joint FIA/Drug Inspectors team) from the DRAP to the Additional Director FIA with regard to the applicant's enlistment as a manufacturer specifically states as under at para-3.

"3. Till today, M/s Romen Pharma, is not entitled to manufacture, import or sell any alternative medicine or health products because it has not been issued any type of certificates for manufacturing, import or contract manufacturing. Similarly none of the products mentioned in the referred letter have been permitted to them for manufacturing or import or contract manufacturing under the Alternative Medicines and Health Products (Enlistment) Rules, 2014."

23. Thus in our view there is sufficient material on record to show that the accused is prima facie connected to the commission of the offense under S.23 of the Drugs Act 1976. Furthermore, since the test reports have now been received and the case clearly comes within S.23 of the Drugs Act 1976 we do not consider this case to be one of further inquiry.

24. As has already been found by this Court in the case of **Muhammed Siddique V State** (BA 210/2016) dated 31-03-2016 offenses under S.23 of the Drugs Act 1976 and punishable under S.27 of the aforesaid Act fall within the prohibitory clause of S.497 Cr.PC and as such are non bailable as such offenses are punishable up to 10 years imprisonment under S.27 of the Drugs Act 1976. For the reasons discussed above the applicant has failed to make out a case for bail under the prohibitory clause as there are reasonable grounds to connect him to the offense

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25. In the aforesaid case this Court had also found that even if such offenses under S.23 of the Drugs Act 1976 do not fall within the prohibitory clause of S.497(1) Cr.PC since they were a crime against society bail could be refused for such offenses on the basis that they formed one of the exceptions to the general rule that bail was the rule in bailable offenses as referred to in the cases of **Tariq Bashir V State** (PLD 1995 SC 34) and **Imtiaz Ahmed V State** (PLD 1997 SC 545)

26. Furthermore, in this case it seems that the applicant was challoned for a similar offense in case No.8 of 2010 State V Mohammed Ali and others before the Drug Court Sindh at Karachi on which he appears to have been acquitted on a technicality as opposed to merits which tends to indicate that he is a habitual offender who society at large should be protected from.

27. Thus, even if the offense was deemed to be a bailable offense for the reasons mentioned above i.e. offenses under S.23 being crimes against Society the applicant has also failed to make out a case for bail on account of S.23 punishable under S.27 of the Drugs Act being a bailable offense.

28. Thus, we uphold the order of the Drug Court dated 6-11-15 and the application for post arrest bail by the applicant is dismissed.

29. We would like to make it clear that as per settled law on the grant of bail we have only made a tentative assessment of the material placed before us and that this order shall not prejudice the case of any party at trial whose case shall be decided on merits based on the evidence produced at the Trial Court.

Dated:- 31-03-2016