

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE  
FIR/ORDER) NO. 4825 of 2024**

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AMOD ANIL BHAVE  
Versus  
STATE OF GUJARAT

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Appearance:

MR IH SYED, SR. ADVOCATE with MR ADITYA A GUPTA(7875) for the Applicant(s) No. 1  
MR MANAN MAHETA, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

**Date : 19/04/2024**

**ORAL ORDER**

[1.0] RULE returnable forthwith. Learned APP waives service of notice of Rule for and on behalf of respondent No.1 – State of Gujarat. With the consent of learned Counsel appearing for respective parties, present petition is taken up for final hearing today.

[2.0] By way of present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the petitioner has prayed to quash and set aside the proceedings of Criminal Case No.63 of 2024 pending before the learned Magistrate, Sanand arising out of charge-sheet filed in connection with FIR being CR No.11192015231106 of 2023 registered with Changodar Police

Station, Ahmedabad (Rural) for the offences under Sections 67A, 65(e) and 81 of the Prohibition Act.

[3.0] The brief facts necessary for adjudication of the present petition are as under:

[3.1] Pursuant to a Janva Jog Entry No.39 of 2023 dated 07.08.2023, impugned FIR came to be filed on 25.11.2023 alleging that 55 bottles of 'Sunindra Asav-Arishtha' and 49 bottles of 'Stone Heal Ayurvedic Proprietary Medicine' were seized and sent for FSL analysis. The FSL report opines that bottles of 'Sunindra Asav-Arishtha' contain alcohol upto 14.48% and bottles of 'Stone Heal Ayurvedic Proprietary Medicine' contain alcohol upto 13.63%. It is further alleged that the accused persons were selling the aforesaid substance without any pass, permit or license.

[3.2] After investigation, charge-sheet came to be filed for the offences under Sections 67(A), 65(e) and 81 of the Prohibition Act, wherein present petitioner is shown as accused No.2 i.e. the owner of M/s. AMB Pharma, which is into manufacturing of 'Sunindra Asav-Arishtha' and 'Stone Heal Ayurvedic Proprietary

Medicine'. It is the case of prosecution that though the percentage of alcohol in the aforesaid medicines was in excess than permissible limit and being prohibited in the State of Gujarat, the accused persons including the present petitioner, for the purpose of their personal monetary gain, have purchased, sold and marketed the aforesaid medicines and thereby committed breach of Sections 24(A) and 59(A) of the Gujarat Prohibition Act, 1949. It is in this regard that charge-sheet came to be filed which culminated into Criminal Case No.63 of 2024 and is pending before the learned Magistrate, Sanand.

Hence, the present petition.

[4.0] Heard learned Senior Advocate Mr. I.H. Syed assisted by learned advocate Mr. A.A. Gupta for the petitioner and learned APP Mr. Manan Maheta for respondent No.1 – State of Gujarat.

[5.0] Learned Senior Advocate Mr. I.H. Syed for the petitioner has submitted that the firm viz. M/s. AMB Pharma of the ownership of the petitioner has been given loan license by M/s Herboglobal Pharmaceuticals for manufacturing 'Sunindra Asav-Arishtha' and 'Stone Heal Ayurvedic Proprietary Medicine' by the Assistant Drugs Controller & Licensing Authority, Dadra & Nagar

Haveli and these products are ayurvedic products which contain the upto 11 to 12% alcohol which is self-generated by the process of fermentation in accordance with Rule 168 of the Drugs & Cosmetics Rules, 1945 and for which the said license is issued under the Drugs & Cosmetics Act, 1940 read with the Rules framed thereunder. The sample from each batch of "Sunindra Asav Arishtha" No.SU 103 and "Stone Heal Ayurvedic Proprietary Medicine" Batch No.SH 303 were sent by the manufacturer for testing to Altra Analytics Laboratories for testing, which is one of the three Government Approved Laboratories, wherein it was noticed that alcohol limit below 12% is permissible and hence, there is no offence. Though on the same set of facts, the offence is registered by the Changodar Police Station, Ahmedabad for the offence under Sections 67(A), 65(e) and 81 of the Gujarat Prohibition Act. Initially, *Janva Jog* Entry No.39/2023 came to be registered with regard to the Batch Nos.SU 103 and SH 303. The said samples were seized and sent to FSL for report and one sample was kept reserved for the Food and Drugs Department.

[5.1] It is the case of the petitioner that, accused No.1 – Sandip

Kulshankar Baranda was selling the intoxicating substance without any pass or permit. The report was received from the FSL which found the content of alcohol upto 14.48% in "Sunindra Asav-Arishtha" while "Stone Heal Ayurvedic Proprietary Medicine" contained 13.63% of alcohol which is more than the permissible limit i.e. 12%. The muddamal was seized from the seller – Sandip Baranda, owner of shop viz. Nirmal Kantibhai Patel, supplier of muddamal being Sunilbhai Mangabhai Pagi, who is the owner of Gayatri Sales & owner of Shiv Shakti Ayurved, owner of Shivam Enterprise & Classic Enterprise which marketed the goods in question and the present petitioner who is the owner of M/s. AMB Pharma and thus, all the accused have committed the offence in question by violating sections 24A and 59A of the Gujarat Prohibition Act, 1949.

[5.2] Further, he has submitted that, the impugned FIR is nothing but abuse of process of law and an absolutely misconceived FIR as the Central Drugs Laboratory has found the level of alcohol in "Sunindra", Batch No.SU 103 to be 10.56% while the same being 9.44% in "Stoneheal Medicine" and as per section 25(4) of the Drugs and Cosmetics Act, report of the Central Drug Laboratory

is conclusive in nature and in-controvertible and hence, no offence is made under the Gujarat Prohibition Act and to continue such litigation is nothing but abuse of process of law as earlier proceeding be filed under the Drugs and Cosmetics Act came to be withdrawn at the instance of Food and Drugs Inspector.

[5.3] Further, he has also relied upon a communication of Food and Drugs Control Administration Department and submitted that the proceedings of Special Civil Application No.18469/2023 and allied petitions came to be withdrawn. Further, he has also relied on a communication made by Mr. A.R. Patel, Drugs Inspector, Food and Drugs Control Administration at Annexure-R wherein it is stated that the Central Drug Laboratory has declared that the said sample is of standard quality and the previous order / communication of office dated 08.09.2023 related to stop sale and recall of subjected drugs stands revoked. Hence, sale of the said product in the market is permissible. Further, the said muddamal having the percentage of alcohol below 12%, no offence is made out and action on the part of respondent Authority is nothing but abuse of process of law. He

has relied upon the decision of the Hon'ble Supreme Court in the case of **Amery Pharmaceuticals and Another vs. State of Rajasthan** reported in **(2001) 4 SCC 382** and submitted that report under Section 25(4) of the Drugs and Cosmetics Act is conclusive proof and conclusive evidence. Hence, he has requested to allow the present petition and quash and set aside the consequential proceedings.

[6.0] *Per contra*, learned APP has vehemently opposed the present petition and submitted that the present petitioner is involved in the illegal activity in the name of ayurvedic medicine and is indulged in illegal activity of selling prohibited goods. The product which has been seized contains alcohol more than the permissible limit of 12%. The police raided the premises and found the muddamal medicine in the possession of the accused and present petitioner is the manufacturer of the said medicines. The report of FSL is received during the investigation. The petitioner has relied on the communication issued by the Drugs Inspector and further he has relied upon the report of Central Drugs Laboratory but the learned APP has submitted that the same is not applicable on two counts viz. (i) the present

complaint is not filed under the Drugs and Cosmetics Act and (ii) no offence is registered under the Drugs and Cosmetics Act and whatever litigation came to be filed at the instance of Drugs Inspector was prior in point of time i.e. commission of the impugned offence i.e. under the Gujarat Prohibition Act. The present offence is committed in the month of August, 2023 while Food and Drugs Inspector has collected the sample in the month of June, 2023 and said proceedings are terminated but herein, based on the FSL report, as the permissible limit of alcohol is more than 12%, offence is made out under Section 67A and other provisions of the Gujarat Prohibition Act. Hence, the offence is registered.

[6.1] Further, he has submitted that learned Counsel for the petitioner has also relied on the communication of Mr. A.R. Patel, Assistant Commissioner, Food and Drugs but he has also opined in writing that, whatever proceeding came to be initiated against the petitioner was under the Drugs and Cosmetics Act and said samples were taken only for the purpose of examining the quality of product but to examine the level of alcohol is concerned, only the FSL can opine *qua* level of alcohol and



further he has also opined that, the possibility of difference of opinion in the percentage of alcohol cannot be ruled out.

[6.2] Hence, learned APP has submitted that this is not a stage where Court should hold mini-trial about applicability of Gujarat Prohibition Act based on the report of Drugs and Cosmetics Act. Further, the reports of FSL on record, which are part of charge-sheet, suggest that alcohol content in the muddamal medicines is more than 12% which is more than, the permissible limit and hence, any question of violation of sections 59A and 24A of the Gujarat Prohibition Act does not arise and whatever defences are available to the petitioner can be raised during the trial and this is not a stage to entertain the present petition. Further, the present petitioner is having past antecedents and hence, he has requested to dismiss the present petition.

[7.0] I have given thoughtful consideration to the arguments canvassed by learned counsel appearing for the respective parties and gone through the material collected during the investigation.

[8.0] It is undisputed and admitted fact that the accused is

owner of M/s. AMB Pharma, having a loan license for manufacturing of Asav and Arishtha issued by Assistant Drug Controller and licensing authority, Dadra and Nagar Haveli to M/s. Herboglobal Pharmaceuticals, he has manufacture "Sunindra Asav Arishtha", Batch No.SU 103 and "Stone Heal Ayurvedic Proprietary Medicine", Batch No.SH 303, he has sold it to "Ram Parlour" and the police seized 55 bottles of 'Sunindra Asav-Arishtha' and 49 bottles of 'Stone Heal Ayurvedic Proprietary Medicine' from the said Ram Parlour and noticing that content of alcohol is more than 12%, the offence is registered.

[8.1] Learned Counsel for the petitioner has mainly argued the permissible limit of alcohol in the samples are below 12% and he has relied on report of Central Drug Laboratory submitted under Section 25(4) and submitted that as it is a conclusive proof, no offence is made out. It is needless to say that, earlier proceeding under the Drugs and Cosmetics Act came to be initiated at the instance of Mr. A.R. Patel, Drugs Inspector and in Criminal Misc. Application No.637/2023, the Food and Drugs Inspector has submitted an application for re-analysis of the sample. Earlier, the report came to be submitted by the Government Analyst,

Vadodara but there was difference in the test report. Under the Drugs and Cosmetics Act in Form No.17, six various samples of different products came to be collected by the Drugs Inspector wherein, ethyl alcohol level of 12.38% was found, while the said product was labelled as "contains self-generated alcohol not more than 11%.

Then, in turn, the said sample came to be sent once again to the Central Drugs Laboratory (Appellate Laboratory) under Section 25(4) of the Drugs and Cosmetics Act for re-analysis and considering the earlier report the sale was stopped and goods were recalled vide letter dated 05.09.2023 by the Drugs Inspector, Food & Drugs Control Administration, Ahmedabad Rural. After re-testing, the communication came to be made to the learned advocate for the petitioner by the Drugs Inspector on 08.01.2024 and states that, the said goods once again were reanalyzed wherein the prescribed limit of alcohol is mentioned less than 11% i.e. respectively 10.32%, 9.44% and 10% i.e. less than the permissible limit. The petitioner has relied on the said report and communication and submitted that no offence is made out. But, it is pertinent to note that, the said analysis report is dated 29.11.2023 and in the communication of the

samples, it is clearly stated that the expiry date of one sample is November, 2023. Considering the aforesaid peculiar fact and as the said analysis was done under the Drugs and Cosmetics Act, even, as opined by the Food and Drugs Inspector, he has stated that only with a view to test the standard of quality, samples were taken i.e. for the purpose of ascertaining whether the goods or sample is of standard or sub-standard or spurious drug and the said exercise was for a particular purpose of manufacturing. In view of the above, proceeding initiated under the Drugs and Cosmetics Act was under the specific enactment and for a specific purpose.

[8.2] Hence, merely based on said report or pursuant to the communication of Drugs Inspector, the said proceeding came to be terminated. However, the said proceeding cannot be equated at par with the proceeding under the Gujarat Prohibition Act. The object of Drugs and Cosmetics Act is to control manufacture and distribution of drugs and even, the Drug Inspector has also opined that, it was for the specific and limited purpose and he has not got examined the level of alcohol and only he has received the report to examine the quality of sample. As special

provision under Section 67A is inserted in the Gujarat Prohibition Act and if percentage of alcohol level is found in the muddamal samples to be more than 12%, then *prima facie*, offence is made out. Herein, FSL has submitted the report and level of alcohol is found more than 12%.

[8.3] The sections 24(A), 59A and 67(A) of the Gujarat Prohibition Act read as under:

***"24A. This chapter not to apply to [certain articles]. - Nothing in this Chapter shall be deemed to apply to-***

- (1) any toilet preparation containing alcohol which is unfit for use as intoxicating liquor;*
- (2) any medicinal preparation containing alcohol which is unfit for use as intoxicating liquor;*
- [(3) any antiseptic preparation or solution containing alcohol which is unfit for use as intoxicating liquor.*
- (4) any flavouring extract, essence or syrup containing alcohol which is unfit for use as intoxicating liquor:]*

*Provided that [such article] corresponds with the description and limitations mentioned in section 59A:*

*Provided further that the purchase, possession or use of any liquor or alcohol for the manufacture of any [such article] shall not be made or had except under a licence granted under section 31A.]*

*[Explanation. - Nothing in this section shall be construed to mean that any person may drink any toilet preparation, or antiseptic preparation or solution containing alcohol; and it is hereby provided that no person shall drink any such preparation.]"*

***"59A. [Manufacture of articles mentioned in section 24A]. -***  
*(1) No manufacturer of any of the articles mentioned in Section*

*24A shall sell, use or dispose of any liquor purchased or possessed for the purposes of such manufacture under the provisions of this Act otherwise than as an ingredient of the articles authorised to be manufactured therefrom. No more alcohol shall be used in the manufacture of any of the articles mentioned in Section 24A than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of the articles:*

*Provided that in the case of manufacture of any of the articles mentioned in section 24A in which the alcohol is generated by a process of fermentation the amount of such alcohol shall not exceed 12 per cent. [by volume.]*

*(2) No person shall-*

*(a) knowingly sell any [article mentioned in section 24A] for being used as an intoxicating drink, or*

*(b) sell any such article under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purpose."*

***"67A. Penalty for manufacturing [articles mentioned in section 24A] in contravention of the provisions of section 59A.-(1) Whoever in contravention of the [provisions of section 59AA or, as the case may be, of section 59A]-***

*[(1a) manufactures, imports or exports any article mentioned in section 24A, or]*

*(a) sells, uses or disposes of any liquor otherwise than as an ingredient of any [article mentioned in section 24A], or*

*(b) uses more alcohol [in the manufacture of any of the articles mentioned in section 24A] than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of such [article], or*

*(c) knowingly sells [any such article] for being used as an intoxicating drink, or sells any such article under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purpose, shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine or with both.*

*(2) No person who has been convicted for any offence under this section or has paid any sum of money under section 104 [by way of composition] for such offence shall be entitled to manufacture, import or to sell any [article mentioned in section 24A] for a period of one year from the date of such conviction or payment, and any person who imports, manufactures or sells any [such article] in contravention of this sub-section shall be liable to the same punishment as is provided for an offence punishable under section 65."*

Considering the provision of Section 59A of the Gujarat Prohibition Act, as the samples are collected and been sent to the FSL and FSL report indicates level of alcohol to be respectively 13.63% and 14.48% in both the samples, which is more than the permissible limit of 12%, *prima facie*, it appears that offence under the Gujarat Prohibition Act is made out as level of alcohol is more than 12%.

[9.0] As discussed in earlier part, the proceeding under the Drugs and Cosmetics Act was only for the limited purpose to examine standard of sample as license is issued by the Department for manufacture of such product. Further, perusing the provisions of section 24A and 59A of the Gujarat Prohibition Act, section 24A provides the medicinal preparation unfit for being used as an intoxicating liquor falling within the ambit of section 29A of the Gujarat Prohibition Act. Even, the said provision read with section

59A provides that medicinal preparation itself corresponds with the word "description" and "limitation" which are contained in section 59A meaning thereby no more alcohol shall be used in the manufacture of such article than the quantity necessary for extraction or a solution of the elements contained therein and for the preservation of the article and in case of manufacture of an article in which alcohol is generated by the process of fermentation, the amount of such alcohol does not exceed 12%. If alcohol in excess of the quantity prescribed by section 59A is found in the article then the offence is made out, whether it is fit or unfit to be used as intoxicating liquor. Sometimes, it happens that abnormal consumption of such drug or goods leads to so many complication and adversely affect the public health.

[9.1] It is pertinent to note that, petitioner has annexed license for the import i.e. SA-2 and SA-4, which are produced at Annexures E and G respectively to the petition, which are issued by the Prohibition & Excise Department, Gujarat. The prescribed limit is 11% self-generated alcohol level when license given for the product and for that sample had been sent to the FSL and FSL has examined and given a report.



[10.0] In view of the above, learned Counsel for the petitioner has mainly relied on the report of Central Drugs Laboratory under the Drugs and Cosmetics Act but it is needless to say that the object of the enactment under the Gujarat Prohibition Act and Drugs & Cosmetics Act both having different objectives and work in different spheres. The license issued by the DySP, Excise and Prohibition and has prescribed the limit of self-generated alcohol level to be 11%. Nowhere the license issued by the Drugs Inspector or by FDA states about the level of self-generated alcohol. The said license issued and approved the manufacturing of the product with the specific contents as Food and Drugs Inspector has examined only the level of the contents and quality of standard of medicine and under the Gujarat Prohibition Act under the special license which is also annexed with the petition respectively at Annexures E, F and G *qua* alcohol level is examined by the FSL. Hence, both enactment and license operate in different spheres and in case of any breach of the condition of the license, if any, which leads to cancellation of license, then the role of Excise Officer would come into play, only if Director is having a reason to believe that, any article does not correspond with the description and the limitation provided

under Section 59A. Herein, in the case on hand, Director has not initiated any action. Police has taken the action *qua* trade of intoxicant material under the Prohibition Act. Hence, argument canvassed by the learned Counsel for the petitioner is not sustainable.

[10.1] Further, the purpose of Drugs and Cosmetics Act is only limited to maintain the quality of drug and does not prescribe any limit and drug is tested only to ascertain as to whether drug is standard, sub-standard or spurious and in this regard opinion is also given by the Food and Drugs Inspector based on his report and the withdrawal of the complaint, petitioner has tried to make out his case but the Drugs and Cosmetics Act is enacted specifically to prevent the sub-standard drugs and to maintain the high standard of the product and the said Act deals with the operation of manufacture, sale, purchase etc. while Gujarat Prohibition Act operates in the field to eradicate the menace of intoxicant and as license to import spurious drug has been obtained under the Prohibition Act and regulation framed thereunder. Hence, FSL report is required to be considered.

[10.2] Further, learned Counsel for the petitioner has argued that only the Excise Officer is competent to decide the level of alcohol and examine the sample but the said argument is not acceptable due to the reason that the powers of Excise Officer under the Gujarat Prohibition Act is only to issue license, which is nothing but as part of regulatory mechanism. Hence, the police has no power to investigate an offence, such argument canvassed by the learned Counsel for the petitioner is also not acceptable in light of the provision of section 120 of the Gujarat Prohibition Act, which empowers the police, entering into at any place where he has reason to believe that, any intoxicant or such material kept or stored or concealed contrary to the Act and having an authority also to seize such material also.

[10.3] Herein, in the case on hand, the material / muddamal substance is seized from the "Ram Parlour" and not from any medical store or from any dispensary or ayurvedic hospital by the police not under the Drugs and Cosmetics Act and hence, authority relied on by the learned Counsel for the petitioner on the case of ***Amery Pharmaceuticals and Another (Supra)*** would not avail any assistance to the petitioner because in the case on

hand no any question of only sale of ayurvedic product as learned advocate has submitted no such license is required to store and sell the same and relied on various replies received under the RTI from various States. The articles herein question is not only ayurvedic medicine alongwith Drugs & Cosmetics Act, a separate license and permission is required to import such goods as it is spirituous articles, self-generated alcohol. The transition of such product is also under enrouted and with arrival of articles inspection is provided for certain condition of license issued by the Superintendent of Prohibition and Excise Department and hence, such huge stock at Pan Parlour without any pass, permit or license is not permissible and even, the report of Central Drug Laboratory is also not helpful to the present petitioner.

[11.0] Whatever contentions raised by the petitioner are defences of the petitioner which cannot be looked into at this stage in exercise of power under Section 482 of the CrPC and this Court should not hold mini-trial while exercising the inherent jurisdiction under Section 482 of the CrPC. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Rajeev Kourav vs. Baisahab and**

**Others** reported in **(2020) 3 SCC 317** wherein it has been observed and held that evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of criminal proceedings and High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 of the CrPC for quashing of criminal proceedings, if a *prima facie* case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

[11.1] Further, in the case of **Ramveer Upadhyay & Anr. vs. State of U.P. & Anr.** reported in **2022 OnLine SC 484**, it is observed and held as under:

*“Even though, the inherent power of the High Court under Section 482 of the CrPC, to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 of the CrPC is not to be exercised for the asking.”*

Further, the Hon'ble Supreme Court in the case of **Central Bureau of Investigation Vs. Aryan Singh etc.** reported in **2023 SCC Online SC 379**, held that scope under Section 482 of the CrPC is very limited and High Court cannot conduct a mini trial.

The Hon'ble Apex Court in para 10 held as under:-

*“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.”*

[11.2] Further, criminal proceeding would have to proceed entirely based on the allegation made in the complaint or the document collected during the investigation. It is not justified to embark inquiry or to hold mini trial *qua* genuineness or credibility of the material collected during the investigation and Court cannot go into correctness or otherwise of the material collected by the prosecution. In this regard, reference is required to be made to the decision of the Hon'ble Apex Court in the case of

**Manik B. vs. Kadapala Sreyes Reddy & Ors.** reported in **2023 Live Law 642 (3 Judges' Bench).**

[11.3] Further, considering overall facts and attending circumstances more particularly peculiar facts of the present case, when investigation is completed and charge-sheet is already filed, offence under Sections 67A, 65(e) and 81 of the Prohibition Act are clearly made out and therefore, merely because anti bail is granted to the present petitioner based on correspondence of Mr. A.R. Patel, Drugs Inspector is not a ground to quash the proceedings in connection with offence under Sections 67A, 65(e) and 81 of the Prohibition Act as the accused has manufactured and abetted an offence. At this stage, it will be profitable to refer to the decision of the Hon'ble Apex Court in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra** reported in **2021 SCC OnLine SC 315**, wherein it is observed and held that when at the initial stage *prima facie* offence is made out and complaint does not fall within the purview of exception and rarity than the original rules, such proceedings shall not be scuttled.

[11.4] It is also worthwhile to refer to the decision of

Hon'ble Supreme Court in the case of **Supriya Jain vs. State of Haryana** reported in **2023 LiveLaw (SC) 494** wherein relying on the decision of the Hon'ble Supreme Court in the case of **Amit Kapoor v. Ramesh Chander** reported in **(2012) 9 SCC 460 (Paras 27.1 to 27.16)**, it is held as under:

*"...It is no part of the business of any of the courts to ascertain what the outcome of the trial could be, ~ conviction or acquittal of the accused. The small window that the law, through judicial precedents, provides is to look at the allegations in the FIR and the materials collected in course of investigation, without a rebuttal thereof by the accused, and to form an opinion upon consideration thereof that an offence is indeed not disclosed from it. Unless the prosecution is shown to be illegitimate so as to result in an abuse of the process of law, it would not be proper to scuttle it."*

[12.0] Further, so far as submission of the learned APP has that petitioner is having past antecedents and involved in illegal activity or prohibition in garb of manufacturing ayurvedic product is concerned, it is pertinent to note that what is not directly permissible under the Prohibition Act, petitioner wants to continue doing it indirectly. The petitioner has relied on the report of the Food and Drugs Inspector, which could not be helpful or relevant at this stage. It may be relevant for his defence at the stage of trial but not at the stage of quashing of the proceedings.



[13.0] Further, Gujarat is a dry State and pursuant to Article 47 of the Constitution of India, the directive principles of the State policy, it is the duty of the State to raise the standard of living and improve the public health and for the said purpose, prohibition of such intoxicating drugs being made compulsory in the Gujarat State. The State is committed to the ideas and principles of Father of Nation Shri Mahatma Gandhji and State also firmly intends to eradicate the menace of consuming liquor or intoxicating drugs to overhaul the law relating to intoxicating drugs and total prohibition in the State and for that amendments also being made in the Gujarat Prohibition Act. Considering the aforesaid fact, as the present petitioner is facing the charge of selling the intoxicating drugs in the guise of ayurvedi medicine and fixing the stickers below permissible limit i.e. 11% but actually analysis of the muddamal substance as noticed by the FSL is more than 12%. Considering the aforesaid fact, *prima facie*, offence is made out and accused are continuing illegal activities of prohibition in the garb of selling and product of ayurvedic medicine.

[14.0] In wake of aforesaid discussion, present petition fails

and same is hereby ***dismissed***. Rule is hereby discharged. However, it is needless to say that, the observations made in the order are tentative in nature and the learned Magistrate shall decide the criminal case on its own merits without being influenced by any of the observations made in the present order.

**(HASMUKH D. SUTHAR, J.)**

*Ajay*