



Drugs and Cosmetics Act - Bail - Prima facie requirement is to show he is in charge of, or responsible for the conduct of the business of the company, be it in any capacity and if he is the Director, Manager, Secretary or officer of the company it should be averred and shown that the offence took place with his consent or connivance or is also attributable to the neglect on the part of such person. [ID 454671]

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**SUNITA DHAWAN v. UOI, 2023 PLRonline 006, (2023-3)211 PLR 143 (SN)**

**2023 PLRonline 006**

**[punjab and haryana](#) HIGH COURT**

Before:-Mr. Sandeep Moudgil, J.

SUNITA DHAWAN and Anr. - Petitioners

Versus

UOI - Respondents

CRM-M-15224 of 2023.

11.07.2023 .

**Drugs and Cosmetics Act, 1940 Sections 32/16/17-A(f)/17- B(d)/18(a)(i)/ 18(a)(vi) and 18(c).**

**Drugs and Cosmetics Act, 1940 Section 34 - Vicariously liability - Basic material and averment required so far as Sub-section (1) of Section 34 of the Act is concerned is to prima facie show that the particular person/accused is in charge of and was responsible to the company for the conduct of its business - Through this clause though almost every person connected with the company may be arrayed as accused and be prosecuted, be it the Director, Manager, etc., in its wisdom the legislature has added the second clause to this section creating specific vicarious liability so far as Director, Manager, Secretary and other officers are concerned also and this provision starts with non obstante clause - Under Sub-section (2) of Section 34 of the said Act, apart from showing that the accused person is a Director, Manager, Secretary or other officer of the company, it must be shown or proved that the offence has been committed with his consent or connivance or is attributable to any neglect on the part of such Director, Manager, Secretary or other officer of the company - there are certain restrictions and preventive measures placed by the legislation itself for making them co-accused along with the company - Prima facie requirement is that the complainant to substantiate the basic requirements like the present accused is, to show he is in charge of, or responsible for the conduct of the business of the company, be it in any capacity and if he is the Director, Manager, Secretary or officer of the company it should be averred and shown that the offence took place with his consent or connivance or is also attributable to the neglect on the part of such person viz. Director.**

**Drugs and Cosmetics Act, 1940 Section 18(a)(i) - Plea that the order passed by the trial court is absolutely silent as to on which basis, the provisions of Section 18(a)(i) of the Drugs are made out against the petitioners - Trial court, at the very first instance, is not expected to carry out any investigation at its own level since such an issue is required to be ascertained during trial - The trial court is only required to see if prima facie offence, as alleged, is made out against the petitioners or not.**

Counsel: *Mr. Keshav Pratap Singh, For the Petitioners. Ms. Gurmeet Kaur Gill, Sr. Panel Counsel, For UOI.*

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