

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

**% Reserved on: 10<sup>th</sup> September, 2014**  
**Date of Decision: 23rd September, 2014**

**+ CRL M.C. 4641/2013**

**DIRECTORATE OF REVENUE INTELLIGENCE .....Petitioner**  
**Through: Mr. Satish Aggarwala, Advocate.**

**versus**

**ANIL KUMAR .....Respondent**  
**Through: Mr. K.J.S. Maan & Mr. Nitin**  
**Joshi, Advocates.**

**+ CRL M.C. 4672/2013**

**DIRECTORATE OF REVENUE INTELLIGENCE .....Petitioner**  
**Through: Mr. Satish Aggarwala, Advocate.**

**versus**

**MANU KHOSLA & ANR. ....Respondents**  
**Through: Mr. S.S. Das, Advocate.**

**CORAM:**  
**HON'BLE MR. JUSTICE VED PRAKASH VAISH**

**JUDGMENT**

1. The petitioners have preferred these two petitions under sections 397/401 read with section 482 of the Code of Criminal Procedure, 1973 (hereafter referred to as 'Cr.PC.') against orders dated 20.07.2013 and 24.07.2013 both passed by the learned Additional Sessions Judge–Special Judge, NDPS, Saket Court Complex, New Delhi whereby all the respondents were granted bail under Section 167 of Cr.P.C.

2. Since both these petitions have arisen out of a common case, these petitions are taken up together for disposal.

3. A concise outline of the facts of the case are that the officers of Directorate of Revenue Intelligence (hereafter DRI), had intercepted one Mahindra Champion luggage carrier three wheeler, having registration no. DL ILN 7074 on Shankar Road, Near Ram Manohar Lohia Hospital, New Delhi on 15.04.2013 at about 9:40 pm. The above vehicle was being driven by one Bablu Ram and one Anil Kumar, was sitting on the seat adjacent to the driver. On search of the vehicle, 11 white colour HDPE packets/bags were found, which contained white colour crystalline substance. Thereafter DRI officers conducted a test with a field kit on the said substance and it tested positive for the presence of Methaqualone. The total weight of the above substance was found to be 272.800 Kgs.

4. During interrogation it was revealed that Bablu Ram was only a driver and he was not aware of the contents of the above consignment. He was subsequently let off by the DRI officers. However, the above co-accused Anil Kumar admitted the knowledge regarding the nature of the above substance. In a statement he disclosed that the above packets were handed over to him by one Parmanand, who is actually the co-accused i.e. Manu Khosla. He further identified the co-accused Manu Khosla who was already summoned by the DRI officers.

5. Subsequently, a raid was conducted at the residential as well as business premises of both the accused. Nothing incriminating was found at the residence of Anil Kumar. Whereas, a further 33.450 Kg of similar substance was recovered from the residence of Manu Khosla. Based on a recorded statement of the accused Manu Khosla, under section 67 of the

NDPS act, a further recovery of 951.350 Kg of the similar substance was effected from a white colour Toyota Fortuner bearing registration no. DL 13CA 1800, parked in a locked condition outside his residence. This car was owned by the company of respondent no. 2, Amit Kumar Singh, and his wife Smt. Nupur Singh. Therefore, in totality 1257.600 Kgs (approximate net weight) of the above mentioned substance was recovered in the raids conducted during a period from 15.04.2013 to 17.04.2013.

6. Counsel for the petitioner submitted that in their respective voluntary statements tendered under Section 67 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), the respondents and co-accused Anil Kumar admitted incriminating facts and their involvement in the illicit traffic of psychotropic substances. He further submitted that respondents and co-accused Anil Kumar in their respective statements have further admitted that the seized contraband was to be exported to the United Kingdom. He also submitted that Respondent No.2, in his voluntary statement dated 02.05.2013 tendered under section 67 of the NDPS Act, 1985, further, interalia stated that he had got the psychotropic substance from Mumbai. He further submitted that Respondent No.2 had made properties from his earnings in illegal business of psychotropic substances which were either in his own name or in the name of his wife Ms. Nupur Singh.

7. Learned counsel for the petitioner further submitted that out the 1257.600 Kgs of contraband substance, 1043.600 Kgs was found to be Ketamine Hydrochloride, a psychotropic substance, listed at SI.No.110A read with SI.No. 111 in the list of Psychotropic Substance under the

schedule to the NDPS Act, 1985 as per the report of the Central Revenues Control Laboratory (hereafter referred to as CRCL). For the remaining 214 kgs, CRCL had suggested to forward the samples to CFSL Hyderabad, to rule out the possibility of any narcotic drug and psychotropic substance in the samples. He also submitted that the report nowhere mentions that the rest of the substances are natural substances as alleged by the respondents in their bail applications. The learned Special Judge, NDPS, Saket, New Delhi vide order dated 20.07.2013, relying upon multiple judgments stated that the contraband substance falls under Drugs and Cosmetics Act and therefore, based upon those averments the respondents were granted bail.

8. Counsel for the petitioner submitted that the above order is bad in law. Besides establishing the above facts, counsel for the petitioner submitted that Mr. Anil Kumar, fully aware of the contraband substance in the Mahindra champion vehicle, decided to bring the goods to his courier office i.e. M/s Cruze Courier at Sant Nagar for subsequent export to United Kingdom through his courier company in consideration of Rs. 30,000 per bag of about 25-30 kgs narcotic substance in addition to normal courier charges. Counsel for the petitioner has therefore preferred this petition before this court on the grounds that the order of bail is bad in law and also on facts ab initio, as Mr. Anil Kumar and the respondents have all admitted in their voluntary statements that the said contraband substance was to be exported to United Kingdom. He also submitted that the respondents have acted in violation the NDPS Act, 1985 and NDPS Rules, 1985. In conclusion, the learned counsel for the petitioner submitted that Ketamine Hydrochloride used for therapeutic purpose may become a part of Schedule H of the Drugs and Cosmetic Rules, 1945.

However, Ketamine Hydrochloride transferred in huge quantity as is the scenario in the present case without any documents shall not come under the ambit of above provisions of marketing for therapeutic purpose and therefore, strictly falls under the ambit of NDPS Act.

9. Per contra, counsel for the respondents has already stated before the learned Special Judge, NDPS, Saket courts that in view of the test report dated 24.05.2013, it has been opined that out of the total 39 samples, 30 samples did not answer positive test for the presence of Methaqualone but these answered positive for the presence of Ketamine Hydrochloride only. He further submitted that, in the remaining nine samples also, presence of Methaqualone could not be ascertained, and the same were to be forwarded to CFSL, Hyderabad for their characterization, to rule out possible presence of any narcotic drugs and psychotropic substance in the said samples. He also submitted that the investigation in this case should be governed by the Drugs and Cosmetics Act, 1940 as Ketamine is included in Schedule H of the said Act and the period of 180 days prescribed in the NDPS Act should not be made applicable as the NDPS Act is not attracted.

10. The learned counsel while arguing on behalf of accused Mr. Amit Kumar Singh (Respondent No.2) further submitted that the respondent has been falsely implicated in this case by the officers of DRI. He also submitted that nothing incriminating was ever recovered from the possession of the present respondent or at his instance. He further submitted that Respondent No.2 was tortured and maltreated to the extent that he was forced to give a statement which was dictated to him, under the garb of provisions of Section 67 of the NDPS Act. He also submitted

that Respondent No.2 was solely arrested on the basis of his involuntary statement, under the provisions of the NDPS Act that he didn't give voluntarily. He also submitted that Respondent No.2 was never confronted with the other co-accused namely Anil Kumar and Manu Khosla. He further submitted that respondent No.2 when appeared before the officers of DRI in pursuance of a summon, he had gone with a police complaint indicating that the vehicle in question, was stolen but the DRI was uncooperative to his averments. In conclusion the learned counsel prays for the dismissal of the petition filed against respondent No.2.

11. I have bestowed my conscious thought to the rival submissions of learned counsel for both the parties and perused the matter on record.

12. I have read and analysed the submissions made by both the learned counsels. Before advertng to the facts of the present case, I deem it appropriate to analyse and find out the true scope and ambit of NDPS Act. The above case is a matter involving psychotropic substances. Section 2(xxiii) explains psychotropic substances as:

“Psychotropic substance means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule.”

13. Section 8 of NDPS Act reads as under: -

“8. Prohibition of certain operations. - No person shall

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or”

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorization also in accordance with the terms and conditions of such licence, permit or authorization:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

[Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.]”

14. Department of Revenue of the Ministry of Finance with its Notification No.S.0.311.(E) dated 10.02.2011 declared Ketamine Hydrochloride to be a part of the schedule of the said act. Thereby declaring it to be a Psychotropic substance. The question that comes up for consideration before this court is that whether the prohibition under Section 8 of the NDPS Act is confined to Schedule 1 of the same act or all the schedules are a part of it equally.

15. In a recent judgment passed by Three Judges Bench of Hon’ble Supreme Court in case **‘Union of India & Another vs. Sanjeev V.**

**Deshpande'**, *Criminal Appeal no. 660 of 2007* decided on 12.08.2014, it was held as under: -

“25. In other words, dealing in narcotic drugs and psychotropic substances is permissible only when such dealing is for medical or scientific purpose does not by itself lift the embargo created under Section 8 (c). Such a dealing must be in the manner and extent provided by the provisions of the Act, Rules or Orders made thereunder. Sections 9 and 10 enable the Central and the State Governments respectively to make rules permitting and regulating various aspects contemplated under Section 8 (c), of dealing in narcotic drugs and psychotropic substances.

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29. We are unable to agree with the conclusion (reached in Rajesh Kumar Gupta's case) that the prohibition contained in Rule 63 of the 1985 Rules is applicable only to those narcotic drugs and psychotropic substances which are mentioned in Schedule-1 to the rules and not to the psychotropic substances enumerated in the Schedule to the Act. Such a conclusion was reached in Rajesh Kumar Gupta's case on the understanding that Rule 53 (prohibiting the import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule-I to the Rules) is the source of the authority for such prohibition. Such a conclusion was drawn from the fact that the other Rules contained in the Chapter permit import into and export out of India of certain narcotic drugs and psychotropic substances other than those specified in Schedule-I to the Rules. Unfortunately, the learned Judges in reaching such a conclusion ignored the mandate of Section 8(c) which inter alia prohibits in absolute terms import into and export out of India of any narcotic drug and psychotropic substance. Rules framed under the Act cannot be understood to create rights and obligations contrary to those contained in the parent Act.

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34. On the above analysis of the provisions of chapters VI and VII of the 1985 Rules, we are of the opinion, both these Chapters contain Rules permitting and regulating the import and export of narcotic drugs and psychotropic substances other than those specified in the Schedule-I to the 1985 Rules subject to various conditions and procedure stipulated in Chapter VI. Whereas Chapter VII deals exclusively with various other aspects of DEALING IN psychotropic substances and the conditions subject to which such DEALING IN is permitted. We are of the opinion that both Rules 53 and 64 are really in the nature of exception to the general scheme of Chapters VI and VII respectively containing a list of narcotic drugs and psychotropic substances which cannot be dealt in any manner notwithstanding the other provisions of these two chapters. We are of the clear opinion that neither Rule 53 nor Rule 64 is a source of authority for prohibiting the DEALING IN narcotic drugs and psychotropic substances, the source is Section 8. Rajesh Kumar Gupta's case in our view is wrongly decided."

16. It is therefore, established beyond any cavil that import and export of any of the contraband substances annexed as schedule to the NDPS act falls within the ambit of illegal substances triable under NDPS act. This court is in agreement to the submission of the petitioner that the Ld. Special Judge, NDPS, New Delhi while granting bail has relied upon case law, all of which are related to Schedule H drugs (Prescription drugs), under the Drugs and Cosmetic Rules, 1945. However, since it has been established above that Ketamine Hydrochloride is a valid part of NDPS act, therefore this court while setting aside the order of the learned Special judge is of the opinion that the bail of the respondents be also set aside. It is further of the opinion that as far as allegations made by the learned counsel for the respondents about the procedures followed by the

DRI are concerned, they are based upon exaggerated claims and it finds no justifiable reasons in such claims. This court also holds one Mr. Anil Kumar as the co-accused in the commission of this well conspired drug racket and thereby any or all legal action against him is valid.

17. Based on the CFSL report dated 10.01.2014, the exhibits were analysed based upon appropriate tests and practices and the results obtained by the methods used suggested that Methamphetamine has been detected in some exhibits and whereas Phenylpropanolamine has been detected in the others.

18. Methamphetamine in itself qualifies as prohibited substance under the NDPS Act and accused person in this case are are neither medical practitioners, nor do they have any manufacturing unit nor are they, in any manner, connected with any medicinal preparations. It can be observed that the contraband item was surreptitiously exported in huge quantity. Therefore, no therapeutic efficacy can be proved on behalf of the respondents that could be considered justifiable enough for them to carry and attempt to export such an expansive quantity of contraband substances to the UK. This in itself qualifies as an activity prohibited and punishable under the NDPS Act. The respondents were trying to illegally smuggle contraband substances out of India.

19. On critical analysis of provisions of NDPS Act and the law laid down in **Sanjeev V. Deshpande's** case (supra) the provisions of NDPS Act are applicable in the present case. That being so, the respondents were not entitled to bail under Section 167 of Cr.P.C.

20. In view of the aforesaid discussion, both the petitions succeed. The petitions are allowed and impugned orders dated 20.07.2013 and 24.07.2013 passed by learned Special Judge, NDPS, Saket Courts, New Delhi are set aside. The respondents are directed to surrender forthwith before the trial court, failing which the trial court will proceed further in accordance with law.

21. Both the petitions stand disposed of accordingly.

**V.P. VAISH, J.**

**SEPTEMBER 23rd, 2014**  
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