

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 251

Criminal Miscellaneous No.M-3884 of 2015

Date of Decision: *March 03, 2015*

Narvar Singh

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Akshay Jain, Advocate, for the petitioner.

Mr. R.P.S. Sidhu, Assistant Advocate General,
Punjab.

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Jaspal Singh, J

1. The present petition has been preferred under Section 439 Cr.P.C. for grant of regular bail, during pendency of the trial, in case FIR No.66 dated July 10, 2014, under Sections 22 & 25 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for brevity, 'Act'), registered at Police Station, Kot Dharmu, District Mansa.

2. The contention of learned counsel for the petitioner is that medicines alleged to have been recovered from the petitioner do not fall within the definition of 'Manufactured Drugs' as defined in Section 2(xi)(b) of the Act and are exempted vide Notification No.826(E) dated November 14, 1985. Thus, in the case in hand, the provisions of the Act will not be applicable and no offence can be said to have been made out against the petitioner.

3. Moreover, Notification Nos.SO-957(E) dated September 27, 2001 and 2941(E) dated November 18, 2009 have been issued under clause (viia) and (xxiia) of the Act, meaning thereby, the same have been issued only for the purpose of determining as to whether the quantity of drug will fall in the category of small quantity or commercial quantity and for no other purpose. The notifications of the year 2001 and 2009 will not change the nomenclature of definition of 'Manufactured Drugs' provided under the Act.

4. It has further been contended that there is another aspect of the matter which entitles the petitioner to seek concession of bail as recovery of the alleged tablets has been effected from the co-accused of the petitioner and in such circumstances, it would be a moot point as to whether petitioner

was having conscious possession of the alleged contraband recovered from the other co-accused of petitioner.

5. Taking the case of prosecution from another angle, after recovery, one sample containing 100 tablets of Momolit was sent to the office of Forensic Science Laboratory for analysis and as per FSL report, the said tablets were found to contain Diphenoxylate Hydrochloride 1.8/tablet and Atropine Sulphate 0.018 mg/tablet, which is on the lower side and the case does not fall within the ambit of commercial quantity.

6. This Court has given an anxious thought to the aforesaid submissions of learned counsel for the petitioner and perused the record.

7. The petitioner was intercepted by the police while standing near a motor-cycle of his co-accused alongwith tablets. So, it cannot be said that recovery was not effected from him. Rather, recovery of the tablets was from all the three persons.

8. As per Notification dated November 18, 2009, the entire mixture of solution of the drug content is to be taken into consideration for the purposes of arriving at a conclusion as to whether the recovered material comes within the purview of small or commercial quantity. In the case in hand, 900 tablets of Momolit have been recovered and as per the report of Chemical Examiner, the average weight of one tablet is 81 mg. The salt

detected in the tablets as per the FSL report is Diphenoxylate Hydrochloride. As per entry No.44, 50 grams of the salt comes within the purview of commercial quantity which attracts the rigours of Section 37 of the Act.

9. In the light of what has been discussed above, this Court does not find any merit in the instant petition and the same is, accordingly, dismissed.

March 03, 2015
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(Jaspal Singh)
Judge