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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.9781 of 2015

Date of Decision: 17.07.2015

Raj Kumar @ Raju

....Petitioner

Vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. D.S. Pheruman, Advocate
for the petitioner.

Mr. Arshdeep S. Kler, D.A.G., Punjab.

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?*

RAJ MOHAN SINGH, J.

[1]. Petitioner seeks regular bail in case bearing FIR No.178 dated 19.11.2013, under Sections 22/61/85 of NDPS Act, P.S. Sadar Kotkapura, District Faridkot.

[2]. Police was present at Naka bandi, when special informer gave information that Gurpreet Singh S/o Ajit Singh and Raj Kumar @ Raju are involved in the supply of intoxicant tablets and vials on the basis of money of Aman Kumar @ Vipy. It was disclosed that they were coming in a vehicle make 'Safari'. Naka was installed on the basis of such information.

[3]. 1200 packets each containing 100 tablets were recovered of intoxicant tablet mark Diatil. The total of which came out to be

1,20,000/- tablets. 180 bottles of Rexcop were also recovered.

[3]. Learned counsel for the petitioner submits that Aman Kumar @ Vipy is the proprietor of the Chemist shop of which petitioner was an employee. Proprietor Aman Kumar @ Vipy deputed petitioner and Gurpreet Singh for bringing medicines from Dabwali. Gurpreet Singh was driving Tata Safari and on the way they were intercepted. Petitioner informed the Police that they were bringing the medicine on behalf of proprietor. Aman Kumar @ Vipy (proprietor) was arrested.

[4]. Learned counsel further relied upon extra-judicial confession made by Aman Kumar @ Vipy before Gurmeet Singh S/o Darshan Singh, Ex-Sarpanch of the village. The extra-judicial confession of Aman Kumar @ Vipy revealed that there was a licence of chemist shop and the same was cancelled, but they continued to sell intoxicant medicines as they were earning good. On 19.11.2013, he sent Raj Kumar @ Raju and Gurpreet Singh to Dabwali for bringing intoxicated medicines. On their way to destination they were apprehended by the Police. Aman Kumar @ Vipy requested Gurmeet Singh that he should confirm from the Police as to when report of Chemical Examiner is to be received in respect of intoxicants and in case report is not received then can he get benefit of bail? The aforesaid extra-judicial confession was made in Police custody after making special arrangement by the Police.

[5]. Learned counsel for the petitioner argued on the strength of

2011(2) RCR (Crl.) 850, Ram Singh v. Central Bureau of

Narcotics that servant bringing medicines at the instance of owner is not liable for the act of master. Only owner/master is liable. Para 15 of the judgment has been relied in the aforesaid context to argue that possession of contraband with petitioner cannot be termed to be conscious possession as the contraband belongs to master and he was not having absolute control of the same. For ready reference para 15 of the aforesaid judgment is reproduced hereasunder:-

“15. Now we proceed to consider the last question, i.e. whether the appellant can be held guilty for being in possession or involved in selling the opium so as to attract the mischief of Sections 8/18 of the Act. In sum and substance the confession of the appellant is that he was working in the hotel for the last two months and brought the opium from the house of the hotel-owner to the hotel, where it was being sold tablets to the truck-drivers. In the confession appellant has not stated or for that matter none of the witnesses have deposed that he was involved in selling the opium-tablets. Therefore, the appellant cannot be held guilty for selling opium. Whether in the state of evidence appellant can be held guilty for possessing the opium only on the ground that he brought the opium from the house of the owner to the hotel is another question which requires adjudication. It is trite that to old a person guilty, possession has to be conscious. Control over the goods is one of the tests to ascertain toe an article is conscious possession so also the title. Orr found in possession of an accused it could be presumed that he was in conscious possession. Possession is a polymorphous term which carries different meaning in

different., contest and circumstances and, therefore, it is difficult to lay down a completely logical and precise definition uniformly applicable to all situations with reference to all the statutes. A servant of a hotel, in our opinion, cannot be said be in possession of contraband belonging to his master unless it is proved that it was left in his custody over which he had absolute control. Applying the aforesaid principle when we consider the facts of the present case it is difficult to hold that opium was in possession of the appellant. There is C.-evidence on record to suggest that the appellant was in occupation of the room from where opium was recovered. Further the evidence clearly points out that title to the opium vested in the owners of the hotel. The confession given by the appellant was only that he was servant of the owners of the hotel from where the opium was recovered. In the face of the state of evidence it is difficult to hold that the appellant was in conscious possession of the opium. Section 18 of the Act prescribes punishment for possession and that possession, in our opinion, has to be conscious. In the facts of the present case it is difficult to hold that the appellant was in possession of the opium and, therefore, his conviction and sentence cannot be sustained.”

[6]. On the other hand Mr. Kler, learned D.A.G., Punjab vehemently contended that recovered contraband falls under commercial quantity. The recovery is of huge contraband. Petitioner was apprehended on the spot. Licence of Aman Kumar @ Vipy had already stood cancelled. Even the vehicle in which contraband was recovered did not belong to Aman Kumar @ Vipy, rather the same was found to be a hired vehicle. No authorisation can be lawfully

presumed for transportation of drugs, particularly when the licence of owner of the chemist shop had already been cancelled. Even the possession of contraband by said owner of chemist shop would have been illegal if found in his possession.

[7]. According to learned State counsel bar created under Section 37 of Narcotic Drugs and Psychotropic Substances Act (for short 'the NDPS Act') squarely covers the present case and no bail can be granted in respect of commercial quantity.

[8]. I have considered the rival submissions. In the present case huge quantity of contraband has been recovered. Contraband was recovered from the conscious possession of the petitioner. Plea of relationship of master and servant cannot be applied to the present case in view of cancellation of licence of Aman Kumar @ Vipy. No such authorisation can be legally permitted to carry contraband which is in the nature of commercial quantity and is hit by Section 37 of NDPS Act.

[9]. In the cited judgment, it is not discernible as to whether opium tablets were of commercial quantity or not? No such factum of huge quantity is involved, warranting applicability of Section 37 of the NDPS Act. In the absence of any licence with the owner of the chemist shop, no such relationship can be presumed and the possession of petitioner cannot be termed to be otherwise than the conscious one.

[10]. The above observations made are only for the purposes of

deciding the bail application and such observations may not be construed to be final opinion on merits of the case.

[11]. In view of aforesaid, no case is made out to grant regular bail to the petitioner. Accordingly, prayer for regular bail is declined. Petition stands dismissed.

July 17, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE