

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRM-M No. 3470 of 2018 (O&M)
Date of decision : 29.5.2018

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Ganesh Kumar @ Dinesh

.....Petitioner

vs.

State of Punjab

.....Respondent

2) CRM-M No. 7637 of 2018 (O&M)

...

Sampan Dadwal @ Nanu

.....Petitioner

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. K.S. Dadwal, Advocate for the petitioner(s).

Mr.Saurav Khurana, Deputy Advocate General, Punjab.

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H. S. Madaan, J.

Vide this order I intend to dispose of two petitions, bearing CRM-M-3470-2018 titled as Ganesh Kumar vs. State of Punjab and CRM-M-7637-2018 titled as Sampan Dadwal @ Nanu vs. State of Punjab, as both these petitions have arisen out of the same FIR.

These petitions for regular bail have been filed by petitioners – Ganesh Kumar @ Dinesh and Sampan Dadwal @ Nanu, both of them being accused in FIR No. 46 dated 29.5.2016, for an

offence under Section 22 of the Narcotic Drug and Psychotropic Substances Act, 1985 (hereinafter to be referred to as 'the NDPS Act') registered at Police Station Sadar Rajpura, District Patiala.

Briefly stated as per the prosecution story, the facts of the case are that on 29.5.2016 accused Ganesh Kumar was found in possession of 180 phills Corex average quantity 100 ml (180 x 100 = 18000 ml) (Codine), whereas accused Sampan Dadwal @ Nanu was found in possession of 180 phills Corex average quantity 100 ml (180 x 100 = 18000 ml) (Codine), amounting to commercial quantity. They were arrested in this case.

They had moved applications for grant of regular bail before the Court below, which were dismissed by Judge, Special Court, Patiala, vide separate judgments dated 9.12.2016 and 21.12.2016, as such they have approached this Court for grant of similar relief by way of filing the present petitions, which are being opposed by the State counsel.

I have heard learned counsel for the petitioners, learned State counsel, besides going through the record.

Admittedly, recovery of contraband effected from the accused amounts to commercial quantity, which attracts bar of Section 37 of the NDPS Act., which reads as under:-

“1[37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall

be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]”

Therefore, the petitions are liable to be dismissed on that very score. According to the petitioners, they had been involved in this case falsely and the case is covered by Drugs and Cosmetics Act 1940 and rules framed thereunder.

As far as the petitioners being innocent and having been involved in this case wrongly, that would be determined during the

trial and this Court is not to hold a mini trial at this stage, so as to find out the guilt of the accused, as to whether the recovery is actually effected from the petitioners or not. As regards the case being not covered under the Drugs and Cosmetics Act, several authorities have been cited by learned counsel for the petitioners in that regard:-

1. *Mohmed Salim vs. State of Haryana 2008 (2) RCR*

(Criminal) 128;

2. *Parveen and another vs. State of Haryana, in CRM-*

M-44411-2016 decided on 2.8.2017 by this Court;

3. *Manpreet Singh vs. State of Punjab 2015 (1) RCR*

(Criminal) 102;

4. *Balwinder Singh vs. State of Punjab, in CRM-36805-*

2016 in CRA-S-1142-SB-2016, decided on 2.2.2018

by this Court; and

5. *Bikkar Singh vs. State of Punjab 2006 (3) RCR*

(Criminal) 16.

These authorities are not applicable due to different facts and circumstances, rather a Division Bench judgment of this Court in ***Inderjeet Singh @ Laddi and others vs. State of Punjab 2014 (3) RCR (Criminal) 953***, has observed as under :-

54. As a consequence of the above, it may be noticed that:-

(i) Manufactured drugs are those drugs which are defined in section 2 (xi) of the ndps act and have been notified by the Central Government vide notification dated 14.11.1985 and subsequent

notification dated 29.1.1993. The possession of such drugs in contravention of the NDPS Act and the NDPS Rules would entail criminal prosecution of the offender under section 21 of the NDPS Act.

(ii) The mere fact that the drugs which are covered under 'manufactured drugs' under the NDPS Act and the NDPS Rules and psychotropic substances as mentioned in Schedule of the NDPS Act and schedule I of the NDPS Rules and are also covered by the D&C Act and the 1945 Rules thereunder would not mean that the offender can be penalised only under the D&C Act and the 1945 Rules and not proceeded against the NDPS Act and the NDPS Rules. In case there is a contravention of the NDPS Act and the NDPS Rules, the stringent provisions of the latter can be resorted to.

(iii) A person possessing manufactured drugs in terms of the NDPS Act and the NDPS Rules is to strictly adhere to the provisions relating to sale, purchase, transport, carrying, storage, distribution etc. in accordance with the provisions of the D&C Act and the 1945 Rules as also the provisions of the Punjab NDPS Rules 2012.

(iv) For transportation of the 'manufactured drugs' a pass or permit in terms of Rule 18 of the

Punjab NDPS Rules 2012 is to be possessed.

(v) It is to be ascertained in each case whether the manufactured drug, the contravention of which is alleged by a person falls within the permissible limits of the percentage of dosage provided for the drug by the notification dated 14.11.1985 and subsequent notification dated 29.01.1993 issued in exercise of power conferred by Section 2 (xi)

(b) NDPS Act However, the contravention of manufactured drug or possession of quantity in bulk is to be taken into consideration and not per dosage specially when there is a violation of the D&C Act and the 1945 Rules that is to say they are sold, purchased, distributed, stored, transported, carried etc. without a valid licence or kept without a valid authorization. The possession of quantity in bulk would be an indication that it is not for medicinal or therapeutic use but is sought to be misused by drug addicts and drug traffickers and would be treated as applicable to the entire quantity recovered of anyone or more narcotic drug or psychotropic substance of that particular drug in dosage forms and not just its pure drug content.

(vi) When a manufactured drugs are sold, purchased, distributed, stored, transported, carried

etc. in bulk form, the notification dated 18.11.2009 issued by the Central Government in exercise of powers under Section 2 (viia) and (xxiia) NDPS Act would apply and the question that these drugs contain an exception in terms of notification dated 14.11.1985 would not apply as the exceptions would apply when the manufactured drugs are for medicinal or therapeutic use.

(vii) The quantity of manufactured drugs is not to be determined on per capsule basis when these are carried without proper licence or authorization. In other words the mere dosage of the manufactured drug in one capsule is not to be considered but the dosage in the number of capsule together is to be considered for determining as to whether the exceptions provided in the notification dated 14.11.1985 declaring the narcotic substance and preparations as mentioned therein to be manufactured drugs.

(viii) It is suggested that the State authorities should get the drugs in respect of which there is a contravention and that are recovered examined by the Chemical Analysts at the earliest and a report provided to the offender at the earliest so that the position can be ascertained as to whether the

alleged offender was in possession of permissible quantity of the drug or otherwise. In case there is delay this would entitle the offender to at least interim bail till the report is finally received.

(ix) In relation to the search and seizure, the provisions of the Code of Criminal Procedure are to be followed. The instruction issued by the NCB should be circulated so these are followed as guidelines. The violation of the guidelines would not per se entail illegality or an irregularity unless it is shown the same has occasioned a failure of justice or resulted in prejudice.

(x) The guidelines laid down and directions issued by the Hon'ble Supreme Court in the case of **Thana Singh v. Central Bureau Of Narcotics**. (supra) should be meticulously and strictly followed and steps should be taken to ensure their due compliance.

(xi) For the sale, purchase, storage, carriage, transportation and use etc. of manufactured drugs, the provisions of the NDPS Act, the D&C Act, the 1945 Rules and the Punjab NDPS Rules, 2012 should be strictly adhered to and followed and violation of the same would necessarily entail its consequences including penal consequences.”

Therefore, the prosecution of the petitioners cannot be

condemned on any such ground and authorities referred to by learned counsel for the petitioners, are not helpful to them in any way, since the position stands clarified from the judgment delivered in **Inderjeet Singh @ Laddi's case (Supra)**.

Finding no merit in the petitions, the same stand dismissed.

29.5.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No