

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-36420 of 2017
Date of Decision: March 12, 2018

Sanjay Kumar

.....Petitioner

versus

Narcotic Control Bureau

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate
for the petitioner
Mr. D.D. Sharma, Senior Standing Counsel for NCB

Sudhir Mittal, J.

The petitioner – Sanjay Kumar son of Giriwar Lal seeks grant of regular bail in NCB Crime No. 01 dated 03.01.2017, which is a complaint filed in the Court of Judge, Special Court, Amritsar, under Sections 8, 18, 62 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act').

2. According to the contents of the complaint, on 03.01.2017 specific information was received that the petitioner is selling products like 'Kamini' and 'Bharshasha' which contain opium without any valid licence. A search was carried out at about 1220 Hrs at M/s S.A. Medicine Centre, Chok Farid, Gali Arirutab, Amritsar and another shop by the name and style of Kanhaiya Lal Girwar Lal at Katra Sher Singh Market, Amritsar. Both the shops were owned by the petitioner. The search of Kanhaiya Lal Girwar Lal did not yield any contraband but from M/s S.A. Medicine Centre, 44 boxes of Bharshasha and 30 boxes of Kamini were recovered along with 18 boxes of Habbe Mumsikkhas besides 200 loose tablets of

Kamini. Some empty wrappers, empty bottles of Kamini were also recovered. Cash amount of Rs. 80,600/- was also recovered.

3. It is not in dispute that the seized medicines are Ayurvedic drugs and have been manufactured by known manufacturer.

4. The aforementioned cash and contraband were converted into sealed packets and lots. The statement of the petitioner was recorded after issuance of notice under Section 67 of the NDPS Act who admitted the recovery and factum of possession of Ayurvedic medicines containing opium. On 05.01.2017, a further search of M/s S.A. Medicine Centre and a store near by was conducted. This yielded some more contraband. The manufacturers of the said drugs were also joined in the investigation, who stated that the drugs were manufactured through a bonafide process of manufacturing and were subsequently distributed. The distributors were also contacted but they denied selling any Ayurvedic medicines containing opium to the petitioner. However, they admitted that the petitioner was known to them on account of his business in Ayurvedic medicines. Customers of the petitioner were also joined in the investigation who admitted purchase of the drugs from him.

5. In a nutshell, case of the complainant is that the petitioner is guilty of purchase, possession and sale of Ayurvedic medicines containing opium without valid licence and, therefore, the complaint was filed in violation of Sections 8, 18, 21, 25 of the NDPS Act.

6. Section 8 of the NDPS Act prohibits possession, sale and purchase of any narcotic drugs or psychotropic substances except for medical purposes and in the manner and to the extent provided by the NDPS Act or the Rules framed thereunder. Section 18 of the NDPS Act provides for punishment for possession, sale and purchase of opium in violation of the provision of the NDPS Act, Rules or conditions of licence granted thereunder. Section 21 of the NDPS Act provides for

punishment for possession, sale and purchase of any manufactured drugs in violation of the provisions of NDPS Act, Rules and conditions of licence granted thereunder and Section 25 of the NDPS Act provides for punishment for allowing any other person to use the premises of an owner for commission of an offence punishable under the NDPS Act. It is, thus, evident that Section 18 of the NDPS Act is not attracted in this case as there is no allegation of possession, sale or purchase of opium poppy or opium in its raw form. Section 25 of the NDPS Act is also not attracted as the person alleged to have committed the offence is also the owner of the premises. Section 8 of the NDPS Act permits possession, sale and purchase of narcotic drugs and psychotropic substances for medicinal purposes and in the manner provided by the Act or the Rules framed thereunder and in accordance with the conditions of licence, if any granted. Section 21 of the NDPS Act, as stated hereinbefore, provides for punishment for possession of manufactured drugs.

7. Conjoint reading of Sections 8 and 21 of the NDPS Act reveals that any drug or psychotropic substance can be possessed in accordance with the provisions of the NDPS Act or Rules framed thereunder and conditions of licence, if any, and in case of violation of the said provisions and/or conditions, a person may be punished depending upon the quantity of contraband recovered provided the contraband is covered by the definition of 'manufactured drug'. Definition of 'manufactured drug' is given in Section 2(xi) of the NDPS Act, according to which an opium derivative is a manufactured drug and Section 2(xvi) of the NDPS Act provides that medicinal opium is covered under the definition of opium derivative. Thus, medicinal opium is a 'manufactured drug'.

8. Learned counsel for the petitioner contends that there is no violation of Sections 8 or 21 of the NDPS Act because the said provisions do not bar the possession, purchase or sale of Ayurvedic drugs, medicines containing opium.

Attention of the Court is drawn towards Rule 27 of the Punjab Narcotic Drugs and Psychotropic Substances Rules, 2012 (hereinafter referred to as 'Punjab Rules') which provides for a licence for Chemist or Dealer for sale and distribution of manufactured drugs other than prepared opium. The singular contention is that no licence is required for sale and purchase of medicinal preparation containing opium and, therefore, the petitioner has not violated any provisions of the NDPS Act or Rules framed thereunder.

9. The above argument is opposed by learned counsel for the Narcotic Control Bureau. The specific contention is that the medicinal preparation containing opium is covered by the definition of 'manufactured drug' and, therefore, Sections 8 and 21 of the NDPS Act have been violated. He has also made reference to Rule 2(vii), (viii), (xi) and (xiv) to argue that even a chemist or a medical practitioner requires a licence. Rules 17 and 24 of the said Rules have also been relied upon for the purpose of arguing that in case a medical practitioner or medical institution has to possess manufactured drugs beyond the quantity prescribed in Section 24 prior approval of the Government is required. In the present case, the recovery is far more than the quantity mentioned in Rule 24(1) of the Punjab Rules and no prior approval of the Government is in existence.

10. Since the learned counsel for the Narcotic Control Bureau has also raised the issue of 'medical practitioner', it is required to be seen whether it is the case of the Narcotic Control Bureau that the petitioner was a 'medical practitioner'.

11. Having perused the complaint, I am of the opinion that the allegations against the petitioner are of being a Chemist possessing and selling Ayurvedic medicines containing opium. Thus, only provisions relating to chemists are relevant and Rule 24 of the Punjab Rules is not attracted at all. The definition of 'Licenced Chemist' and 'Licenced Dealer' is also not of any use because Rule 27 of the Punjab

Rules provides for a licence for sale and distribution of manufactured drugs except

prepared opium. Since a specific exception has been carved in favour of prepared opium it can not be said that even in respect thereof a licence is required. No other provision of NDPS Act, Rules framed there under Drugs and Cosmetic Act, 1940 and Rules framed there under has been cited by learned counsel for the respondent.

12. A reference has also been made to Schedule 'K' of the Drugs and Cosmetic Rules, 1945 by the learned counsel for the Narcotic Control Bureau but the same is totally misplaced. Schedule 'K' refers to Rule 123 of the Drugs and Cosmetic Rules, 1945 and sub rule states that drugs specified in Schedule 'K' will be exempted from the provisions of Chapter IV of the Drugs and Cosmetic Act, 1940 and Rules made thereunder to the extent and subject to the conditions specified in the Schedule. Violation of Drugs and Cosmetic Act, 1945 or the Rules framed thereunder is not in question in the present case and the reference to schedule 'K' is thus misplaced.

13. Thus, the requirement of licence for purchase, possession and sale of Ayurvedic medicines containing opium is not forthcoming from the provisions cited before me. On the contrary, Rule 27 of the Punjab Rules specifically exempts 'prepared opium', although a licence is required for other manufactured drugs. Therefore, although 'manufactured drug' includes medicinal opium, there is no requirement of a licence for stocking drugs containing opium or for the purpose of its sale or purchase.

14. In view of the above, the petitioner is entitled to be enlarged on bail pending trial. The petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the trial Court concerned.

March 12, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No