

233 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48317-2017(O&M)

Date of decision:16.01.2018

Sehbaj Singh @ Baj

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Lakhwinder Singh Mann, Advocate, for the petitioner.

Mr. Rahul Rathore, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail to the petitioner in case FIR No.15, dated 24.04.2017, under Sections 21, 29, 61, 85 of NDPS Act, registered at Police Station Kabirpur (Ahalikalan), District Kapurthala.

Learned counsel for the petitioner submits that initially, the petitioner was granted interim bail subject to await the report of FSL and thereafter, the petitioner has surrendered before the trial Court. Learned counsel for the petitioner further submits that the recovery from the petitioner is of 9700 intoxicant tablets and as per FSL report, Diphenoxylate Hydrochloride per tablet is 2.36 mg and Atrophine Sulphate per tablet is 0.024 mg in parcel No.1 and Alprazolam per tablet is 0.46 mg in parcel No.2.

Learned counsel for the petitioner has referred to Section 2 (xi) (b) of the NDPS Act, to submit that a manufactured drug means a drug as per notification in the official gazette notified to be a manufactured drug.

He further referred to the notification dated 14.11.1985, the operative part is reproduced as under:-

“(1) Dihydrohydroxy Codeinone (commonly known as “OXYCODQNE” and Dihydroxycodeinone); its salts (such as Eucodal, BONCODAL, DINARCON, HYDROLAU - DIN , NUCODAN , PERCODAN, SCOPHEDAL , TEBODOL and the like), its esters and the salts of its esters and preparations, admixtures, extracts or other substances containing any of these drugs.

XXX	XXX	XXX
XXX	XXX	XXX

(58) Ethyl l-(3-Cyano-3, 3-dipbenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester (the international non-proprietary name of which is Diphenoxylate), and its salts, preparations, admixtures, extracts and other substances containing any of these drugs, except preparations of diphnoxylate containing, per dosage unit, not more than 2.5 mg. of diphenoxylate calculated as base, and a quantity of atrophine sulphate equivalent to at least one per cent of the dose of diphenoxylate.”

It is thus submitted that as per clause 58, there is an exception regarding the preparation of the diphenoxylate that if the dosage per unit is not more than 2.5 mg of diphenoxylate calculated as base and a quantity of atrophine sulphate equivalent to at least 01 % of the dose of diphenoxylate, it will be a manufactured drug.

Counsel for the petitioner with reference to the FSL report submits that since diphenoxylate hydrochloride which is found to be 2.36 mg/tablet and Atropine Sulphate is found to be 0.024 mg/tablet, the same is covered by the definition of manufactured drug.

Counsel for the petitioner has further relied upon the judgment

dated 19.12.2012 passed in CRM-M-27245 of 2012 titled as **Balkar Singh Vs. State of Punjab** wherein, while relying upon the judgment of this Court in **2012(1) RCR (Criminal) 684, Kashmir Singh Vs. State of Punjab**, it has been held as under:-

“Notification dated 14.11.1985 deals with Diphenoxylate with its salts and preparations, admixtures, extracts or other substances at serial No.58. A preparation having not more than 2.5 mg. of Diphenoxylate equal, to which atropine sulphate equivalent to at least one per cent of the dosage of Diphenoxylate is added would not fall in the definition of manufactured drug as per the entry at Sr. No.58. In the case in hand, the contents of Diphenoxylate Hydrochloride, as per the chemical examination, was found to be 2.3 mg and 2.4 mg per tablet in the two samples. The contents of Atropine sulphate was less than 1 per cent of that and, therefore, as per the notification dated 14.11.1985 at entry no.58, the tablets in hand would not fall within the definition of manufactured drugs.

When the Review Committee has opined that the drugs Diphenoxylate Hydrochloride and Atropine sulfate are in Schedule H of Drugs and Cosmetics Act, 1940, it cannot be said that the petitioner is liable to be prosecuted under the Act only for the reason that he did not have a chemist licence for keeping the same.”

Similar view has been taken by this Court in order dated 12.11.2013, passed in **CRM-M-33069 of 2013, Charno Vs. State of Punjab**.

Learned counsel for the petitioner also submits that the petitioner is not involved in any other case and has undergone 06 months and 26 days of actual sentence.

Learned State counsel has filed a custody certificate dated

21.12.2017 and as per this custody certificate, the petitioner has undergone more than 07 months of actual sentence. Learned State counsel, on instructions from ASI Tarsem Singh, has further stated that petitioner is not involved in any other case and the case is at the stage of framing of charge.

Without commenting upon the merits of the case, considering the fact that the petitioner is not involved in any other case; he has undergone more than 07 months of actual sentence; it is a debatable issue whether the recovery made from the petitioner is manufactured drug and also in view of the fact that the trial is at an initial stage and it will take long time for conclusion of the same; the petitioner is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

16.01.2018
Hemlata

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No