

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

**Crl. Misc. No.M-8887 of 2018 (O&M)
Date of Decision: November 13, 2018**

Ajay Kumar

.....PETITIONER(s).

VERSUS

State of Punjab

...RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vipul Jindal, Advocate
for the petitioner (s).

Ms. Anju Sharma Kaushik, D.A.G. Punjab.

SURINDER GUPTA, J.(Oral)

This is second petition filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.12 dated 12.01.2017 registered for the offence punishable under Sections 18 and 21 of Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Sadar Amritsar.

Heard.

Petitioner earlier applied for pre-arrest bail, which was allowed vide order dated 14.09.2017 on following terms:-

- “(i) that the petitioner shall make himself available for interrogation by the police as and when required;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer;

- (iii) that the petitioner shall not leave India without the prior permission of the Court;
- (iv) that the petitioner will seek regular bail on the presentation of challan in Court, which the trial Court will decide on the basis of evidence collected during investigation.

Nothing observed in this order shall be treated as opinion of this Court on any aspect of the case.”

After presentation of challan, petitioner moved application for anticipatory bail before Additional Sessions Judge, Amritsar, which was declined vide order dated 19.01.2018.

The facts of the case as enumerated in the order dated 09.06.2017 passed by Additional Sessions Judge, Amritsar are as follows:-

“2. Brief facts of the case of the prosecution are that on 11.01.2017, the police party headed by Inspector Palvinder Singh was present at Bus Stand Vijay Nagar, Batala Road in connection with patrolling and search of bad elements where ASI Parminder Singh alongwith other police officials reached and told that Sanjay Kumar and Ajay Kumar has taken on rent a house from Balwant Singh at Parkash Vihar in front of Chopra Mobile store and they both have kept the heavy quantity of intoxicant medicines there and if raid is conducted, recovery could be effected. At this raid was conducted at the disclosed place where two persons were present. The police party apprehended Sunil Sharma from there and one person whose name was later on known as Ajay Kumar managed to flee away from the spot and heavy quantity of intoxicant medicine i.e. 41520 tablets of Kamni Vidrawan Ras, 42000 tablets of Kamni Vidrawan Ras, 64800 tablets of Kamni Vidrawan Ras, 15840 tablets Kamni Vidrawan Ras, 55680 tablets of Kamni Vidrawan

Ras, 4040 Kamni Vidrawan Ras, 4800 tablets of Kamni Vidrawan Ras, 4800 tablets of Kamni Vidrawal Ras, 7200 tablets of Kamni Des Vidrawal Ras of different manufacturers was recovered from the disclosed place in this case which they kept in their possession without any valid license or permit. On the basis of ruqa, instant FIR has been lodged.”

Learned State counsel has argued that from the house owned by the petitioner, heavy quantity of Ayurvedic drugs of which opium was a content, was recovered. While referring to the report of Forensic Science Laboratory, she has however conceded that the drugs recovered from the house of petitioner were only having traces of Morphine.

Section 2(xv) NDPS Act defines 'Opium' as follows:-

“(xv) “opium” means—

- (a) the coagulated juice of the opium poppy; and
- (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent. of morphine”

As per the above definition, any preparation containing not more than 0.2% of Morphine does not fall in definition of opium. Section 2(xvi) defines opium derivative which includes all preparations containing more than 0.2% of Morphine or containing any diacetylmorphine.

While deciding the earlier anticipatory bail, it was ordered that the petitioner after filing of challan, will seek regular bail which the trial Court will decide on the basis of evidence collected during investigation. He, however, applied for anticipatory bail, which was declined by learned Additional Sessions Judge, Amritsar without looking into the above aspects.

Keeping in view the above facts and circumstances, I am of the opinion that this fact is yet to be seen and determined by the trial Court as to whether the petitioner, who was not apprehended at the spot, was in possession of any opium or opium derivative. Without expressing any opinion on the merits of the case, this petition is allowed and order dated 22.03.2018 is made absolute, subject to the following terms:-

- a. The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- b. In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- c. He shall not leave the country without prior permission of the Court.

November 13, 2018

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No