

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-79338-2018 (O&M)
Date of decision: January 31, 2019.

SABIR AHMAD MIR @ ISFAQ

.... Petitioner

Versus

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

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

Mr. T.P.S. Chawla, DAG Punjab
assisted by ASI Ramesh Kumar.

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JITENDRA CHAUHAN, J (ORAL)

This present petition has been filed u/s 439 Cr.P.C for releasing the petitioner on bail in FIR No.15, dated 3.02.2016 registered under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at P.S Division No.2, Tehsil Pathankot District Pathankot.

During the course of arguments, two questions have been raised by the learned counsel for the petitioner; the first being that the quantity in question is non-commercial and the second question is the prolonged incarceration of the petitioner.

On examination, with regard to first argument, it is to be noticed that 120 Rancof vials (plastic bottles) weighing 100 ml. each were

recovered from the petitioner which is clearly a commercial quantity. It is not in dispute that each 100 ml Rancof vial contained 9.74 mg/5ml of codeine phosphate. Since the petitioner had no documents in his possession to disclose as to for what purpose such a huge quantity of drug containing Narcotic substance was being transported and that too stealthily, it cannot be simply presumed that such transportation was for therapeutic practice. If the entire 100 ml content of Rancof syrup containing the prohibited quantity of codeine phosphate is meant for human consumption, at this stage, the Court feels that the same would certainly fall within the penal provisions of the NDPS Act. The recovery effected from the petitioner not being in question, therefore, the argument of the learned counsel for the petitioner fails on the first score.

So far as the second argument is concerned, implicit reliance has been placed upon **Binod Singh Vs. District Magistare, Dhanbad, Bihar and Others (1986) 4 SCC 416 and Surya Prakash Sharma Vs. State of U.P. and others, 1994 Supp (3) SCC 195.** However, it cannot be lost sight of that the matter is still pending adjudication before a larger Bench of Hon'ble the Supreme Court of India and the standing order No.2941(E) dated 18-11-2009 still subsists which clearly suggests that the entire quantity is to be taken into consideration.

It has further come to the notice of the Court that delay in conclusion of the trial is partially attributable to the petitioner as the petitioner misused the concession of interim bail allowed vide order dated 23.08.2016 and was accordingly declared a proclaimed offender vide order dated 08.11.2017. The petitioner had surrendered on 23.04.2018.

The petitioner is also an accused in another NDPS case in Jammu and Kashmir.

Keeping in view the antecedents of the petitioner the Court is not inclined to grant the concession of bail to the petitioner.

Dismissed.

However, considering the custody of the petitioner, the trial Court is directed to conclude the trial expeditiously preferably within a period of four months from today even if it calls for taking up the matter on day to day basis.

(JITENDRA CHAUHAN)
JUDGE

January 31, 2019.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No