

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

CRM-M No.34815 of 2018

Date of Decision: 09.01.2019

Gurvinder Singh

....Petitioner

Versus

Intelligence Officer, Narcotics Control Bureau,
Amritsar

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. D.D. Sharma, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The present petition has been filed by petitioner-
Gurvinder Singh under Section 439 Cr.P.C for releasing him on regular bail
during pendency of the trial in case NCB Crime No.02/2017 dated
12.01.2017 under Sections 8, 18, 21 and 25 of the NDPS Act, 1985 pending
before the Court of learned Special Judge, Amritsar.

Learned counsel for the petitioner submits that the petitioner
has falsely been implicated in the case, whereas, no offence under the
aforesaid Section of NDPS Act is made out against him. The alleged
recovery is *Ayurvedic Medicinal* preparations and no license is required for
sale and purchase of medicinal preparation containing opium. Learned
counsel also submits that there is no violation of provisions of NDPS Act or
Rules framed thereunder. As per Chapter IVA of the Drugs and Cosmetics

Act, 1940, a specific provision is there relating to manufacture/sale/storage of ayurvedic, siddha and unani drugs. In violation of any specific provisions meant for sale of such medicines, the maximum imprisonment is up to one year and fine. Learned counsel also submits that there is a distinction between the recovery of ayurvedic medicines where permissible opium is there and the recovery of opium itself. As per allegations in the case, the petitioner has been shown to be guilty of sale, purchase and keeping in possession of ayurvedic medicines containing opium without having any valid license and being violative of Sections 8, 18, 21 and 25 of the NDPS Act, 1985. At the end, learned counsel for the petitioner submits that the petitioner is in custody since 12.01.2017 and he is not a habitual offender as no other case of similar nature is pending against him. One similarly situated accused, namely, Sanjay Kumar has filed **CRM-M No.36420 of 2017** and he has been released on regular bail vide order dated 12.03.2018 passed by this Court.

Learned counsel for the petitioner has relied upon judgments of Hon'ble the Apex Court in cases ***Binod Kumar @ Binod Kumar Bhagat vs State of Bihar 2017(4) RCR (Criminal) 125, Union of India vs Ashok Kumar, Special Leave to Appeal (Crl.) No(S).5243 of 2015 decided on 17.04.2017, Mohan Lal vs State of Punjab 2018(4) RCR (Criminal) 101, State Rep. By the Drugs Inspector vs Manimaran (Criminal Appeal No.1493 of 2018)*** decided on **30.11.2018**, judgments of this Court in cases ***Hardeep vs State of Haryana (CRM-M No.16506 of 2018)*** decided on **15.05.2018, Harkesh Kumar @ Rakesh vs State of Punjab (CRM-M No.21096 of 2015)** decided on **22.10.2016, Anil vs State of Punjab (CRM-M No.27909 of 2015)** decided on **19.12.2015, Dr. Shashi Bhushan vs State**

of Haryana (CRM-M No.4643 of 2018), decided on **25.09.2018**, **Binderpal Singh vs State of Punjab (CRM-M No.24502 of 2018)** decided on **29.08.2018**, **Abhishek Chetal vs State of Punjab (CRM-M No.12588 of 2018)** decided on **26.09.2018**, **Kulwant Singh @ Happy vs State of Punjab (CRM-M No.31260 of 2015)** decided on **03.12.2015**, **Deepak Kumar vs State of Punjab (CRM-31715-2017 in CRA-S-5190-SB of 2015)** decided on **22.11.2017** and **Sanjay Kumar vs Narcotic Control Bureau (CRM-M No.36420 of 2017)** decided on **12.03.2018** in support of his arguments.

Mr. D.D. Sharma, learned counsel for the respondent-Narcotics Control Bureau has opposed the submissions made by learned counsel for the petitioner on the ground that the judgments relied upon by learned counsel for the petitioner are not applicable in the case. The controversy in the present case is squarely covered by judgment of Hon'ble the Apex Court passed in **Criminal Appeal No.1512 of 2018** titled as **State of Punjab vs Rakesh Kumar** vide order dated **03.12.2018** as criminal appeal filed by State of Punjab was allowed and judgment of High Court was set aside. Mr. Sharma also submits that huge recovery has been effected from the petitioner and real contents of opium are much more. Petitioner does not deserve to be released on regular bail as he was not having any valid license to sell the medicines, which were recovered from him.

Heard the arguments of learned counsel for the parties and have also perused the allegations levelled against the petitioner and other documents available on the file including the judgments relied upon by learned counsel for the parties.

As per allegations in the complaint, the accused was found in conscious possession of 1,29,640 tablets containing opium of different

brands i.e *Kamini*, *Jalphaladivati*, *Hubbey*, *Munsik Khas* etc. net weight 32.410 kgs and *Barsasa* paste containing 1563 boxes net weight 93.780 kgs and total net weight of medicine containing opium was 126.19 kgs, approximately which was worth Rs.2 crores. The petitioner was not having any license or permit from State Drug Licensing Authority for purchase and store of said medicines and he was arrested in the case. During investigation, Zonal Director, NCB, Chandigarh sought clarification from Director of Ayurveda, Punjab, Chandigarh regarding ayurvedic medicine containing opium with the queries and the said Director, Licensing Authority, Punjab, vide letter dated 08.02.2017 clarified that as per the official record, there is no such registered Ayurvedic Shop in Amritsar District for the sale, purchase and store of Ayurvedic medicines containing opium. After getting the report of laboratory and on completion of investigation, the complaint was presented against the accused. One more person, namely, Sanjay Kumar was also arrested by the NCB being in possession of Ayurvedic Medicines. His bail application filed under Section 439 Cr.P.C was dismissed by the trial Court with the observation that the recovered contraband falls under the category of commercial quantity. Thereafter, he was allowed bail vide order dated 12.03.2018 passed by this Court. At that time, the charges were not framed against said Sanjay Kumar. Thereafter, charges were framed against the petitioner and witnesses have also been examined. The bail application filed by the petitioner was dismissed by the trial Court vide order dated 23.07.2018. However, learned counsel for the petitioner has relied upon the order passed in case of similarly situated accused Sanjay Kumar, whereas, Mr. D.D. Sharma, learned counsel for the respondent-NCB has relied upon the judgment of

Hon'ble the Apex Court in Rakesh Kumar's case (supra). In said case, the application filed under Section 389 Cr.P.C for suspension of sentence was allowed by this Court and the applicant-convict was directed to be released on bail during pendency of the appeal. The accused in that case was convicted by the trial Court and thereafter, he filed criminal appeal against the judgment of conviction and order of sentence. The State of Punjab challenged the order of suspension. This Court observed that manufactured drugs, be it containing narcotic drugs or psychotropic substances, if manufactured by a manufacturer, must be tried, if violation was there, under the Drugs and Cosmetics Act and not under the NDPS Act, except those in loose form by way of powder, liquid etc. Aggrieved by said order dated 29.01.2018, the State preferred an appeal, which was allowed and the impugned order passed by this Court was set aside. A direction was issued to take the accused in custody and also to expedite the hearing and dispose of the appeal, keeping in view the custody.

The relevant portion of judgment of Hon'ble the Apex Court passed in **Rakesh Kumar's** case (supra) is reproduced as under :-

*“14. However, we are unable to agree on the conclusion reached by the High Court for reasons stated further. First, we note that Section 80 of the N.D.P.S Act, clearly lays down that application of the Drugs and Cosmetics Act is not barred, and provisions of N.D.P.S. Act can be applicable in addition to that of the provisions of the Drugs and Cosmetics Act. The statute further clarifies that the provisions of the N.D.P.S Act are not in derogation of the Drugs and Cosmetics Act, 1940. This Court in the case of **Union of India vs. Sanjeev V. Deshpande 2014(13) SCC 1** has held that,*

“35. ...essentially the Drugs & Cosmetics Act,

1940 deals with various operations of manufacture, sale, purchase etc. of drugs generally **whereas Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject.** Further the provisions of the Act operate in addition to the provisions of 1940 Act.”

15. The aforesaid decision further clarifies that, the N.D.P.S Act, should not be read in exclusion to Drugs and Cosmetics Act, 1940. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. In the present case, since the action of the accused-respondents amounted to a prima-facie violation of Section 8 of the N.D.P.S Act, they were charged under Section 22 of the N.D.P.S. Act.

16. In light of above observations, we find that decision rendered by the High Court holding that the accused-respondents must be tried under the Drugs and Cosmetics Act, 1940 instead of the N.D.P.S Act, as they were found in possession of the “manufactured drugs”, does not hold good in law. Further, in the present case, the accused-respondents had approached the High Court seeking suspension of sentence. However, in granting the aforesaid relief, the High Court erroneously made observations on the merits of the case while the appeals were still pending before it.

17. Considering the facts and circumstances of the present case and the gravity of offence alleged against the accused-respondents, the order of the High Court directing suspension of sentence and grant of bail is clearly unsustainable in law and the same is liable to be set aside.

18. Accordingly, the impugned order passed by the High Court is hereby set aside and the concerned authorities are directed to take the accused-respondents herein into custody forthwith.”

Hon'ble the Apex Court, while allowing the appeal filed by the State of Punjab, has relied upon the judgment in case ***Union of India vs Sanjeev V. Deshpande 2014(3) SCC 1***, wherein, it was held that dealing in Narcotic Drugs and Psychotropic Substances is permissible only if it is for medical or scientific purposes. Even the usage for medical and scientific purposes is not restriction free, as it is subject to Rules under the N.D.P.S Act.

In said judgment of ***Sanjeev V. Deshpande's*** (supra), in para No.35, it has been mentioned that essentially the Drugs and Cosmetics Act, 1940 used to deal with various operations of manufacture, sale, purchase etc. of drugs generally, whereas, Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. The provisions of the Act operate in addition to the provisions of 1940 Act. It was also emphasized that the N.D.P.S Act should not be read in exclusion to Drugs and Cosmetics Act, 1940. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. It was also held that action of the accused-respondents amounted to a *prima-facie* violation of Section 8 of the N.D.P.S Act as they were charged under Section 22 of the N.D.P.S Act. It was further held that decision rendered by the High Court holding that the accused must be tried under the Drugs and Cosmetics Act, 1940 instead of the N.D.P.S. Act, as they were found in possession of the “manufactured drugs”, was not held good in law.

Vide notification dated 05.03.2015 issued by the Government of Punjab, Department of Medical Education and Research (Health Branch 3), the Rules and Regulations are for registration of Ayurvedic and Unani

Upvaid in the State of Punjab for the sake of uniformity of standards and which provide that the Registrar of the Board of Ayurvedic and Unani Systems of Medicine, Punjab, shall be the competent authority for the registration, whereas, the Board of Ayurvedic and Unani Systems of Medicine Punjab, shall be the appellate authority for settlement of disputes. It has further been notified that Ayurvedic and Unani Upvaid who want to work in the State of Punjab shall have to get themselves registered with the Board of Ayurvedic and Unani Systems of Medicine, Punjab after the date of issuance of this notification and those who are already working and are found eligible under the rules and regulations notified through this notification shall have to get themselves registered within a period of one year from the date of this notification failing which they shall not be entitled to perform the duties of Ayurvedic and Unani Upvaid.

It has specifically been mentioned in the verification report filed on behalf of respondent-Narcotics Control Bureau through its Intelligence Officer, Narcotic Control Bureau, Amritsar that certificate of Vaid issued to the petitioner by Shiromani Punjabi Vaid Mandal Punjab (Regd.), Amritsar was verified and authenticated. It was found that Mandal is not an Institution, College or University. The petitioner was a member of the Mandal and a certificate was issued to him in the year 2004. The instructions were also issued by the Mandal to its members to work within the prevailing rules and regulation of the land and not to take responsibility of illegal activities regarding sale/purchase of any kind of opium based medicines illegally. Meaning thereby, the petitioner was not competent to keep, sell or purchase of ayurvedic medicines containing opium as he is not having any such license in view of notification issued by the State of

Punjab.

Accordingly, by considering the facts as mentioned above and also the quantity recovered from the petitioner, he does not deserve the concession of regular bail and hence, the petition, being devoid of any merit, is hereby dismissed.

However, the trial Court is directed to make all efforts to expedite the trial.

09.01.2019
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No