

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

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CRM-M-26044 of 2020 (O&M)
DATE OF DECISION : 26.10.2020

Ravinder KaurPetitioner

versus

State of PunjabRespondent

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Ashish Naik, Advocate, for the petitioner.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

ALKA SARIN, J (Oral)

Heard through Video Conferencing.

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') for grant of bail pending trial in FIR No.58 dated 01.12.2018 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, NDPS Act) at Police Station Special Task Force, Phase 4, SAS Nagar, Mohali.

The first petition filed by the petitioner being CRM-M-18104 of 2019 (year is wrongly mentioned in the petition as 2018) was dismissed by this Court vide order dated 17.01.2020.

As per the allegations against the petitioner, on 01.12.2018 she and co-accused, Yadwinder Singh, were apprehended and 1095 medicines were recovered from them – 395 injections of Rexogesic, Buprenorphine Injection IP 2ml and 700 vials of Avil 10

ml.

Learned counsel for the petitioner would contend that Buprenorphine does not fall under the definition of psychotropic substance and does not attract the provisions of the NDPS Act. It is the further contention of the learned counsel for the petitioner that the colour of the plastic bag, from which the contraband was recovered, was green while in the report under Section 173 CrPC a blue colour bag has been mentioned. Counsel has also submitted that the petitioner has been in custody since 01.12.2018.

Counsel for the petitioner has further the contended that this Court in the case of **Anil Kumar alias Nehla Vs. State of Punjab** [CRM-M-28002 of 2018] vide order dated 01.10.2018 has referred the matter to a larger Bench on the question whether a neutral substance is to be excluded while determining the small or commercial quantity of the contraband. The same question would arise in the present case while determining as to whether the quantity recovered from the petitioner would fall in the category of commercial quantity or not.

Mr. Sandhu, appearing on behalf of the State has filed the status report by way of affidavit of Rajesh Kumar, PPS, Deputy Superintendent of Police, Special Task Force, Rupnagar Range, District SAS Nagar, Mohali. The learned State counsel contended that the argument raised by the counsel for the petitioner qua the colour of the bag having been changed from green to blue is baseless inasmuch as the same is a typographical error in the report under Section 173 CrPC and that the bag recovered at the spot was green in colour and that the same very bag was produced before the Chief Judicial Magistrate, SAS Nagar, Mohali which is apparent from the order

dated 02.12.2018 passed by the Chief Judicial Magistrate, SAS, Nagar Mohali which order has been annexed as Annexure R-1 along with the status report.

The learned counsel for the State has further contended that the question as to whether the pure content of the narcotic drug/psychotropic substance alone is to be taken into consideration for determining small or commercial quantity was referred to a larger Bench in **Anil Kumar's case (supra)** in view of the reliance placed by the learned counsel for the petitioner therein on the case of **Rajvir Singh alias Raju Vs. State of Punjab** [2018 (4) RCR (CrI) 375]. Learned State counsel submitted that the decision in **Rajvir Singh's case (supra)** was primarily based on the judgment of the Supreme Court in **E. Micheal Raj vs. Intelligence Officer, Narcotic Control Bureau** [2008 (2) RCR (CrI) 597]. The learned State counsel has further submitted that the Supreme Court in the case of **Hira Singh & Anr. vs. Union of India & Anr.** [2020 (2) RCR (CrI.) 523] has now dealt with the question whether the decision in **E. Micheal Raj's case (supra)** requires re-consideration having omitted to take note of Entry 239 and Note 2 of the notification dated 19.10.2001 as also the inter-play of the other provisions of the NDPS Act with Section 21. The second question, inter alia, which was dealt with by the Supreme Court in the said judgment is whether the NDPS Act envisages that mixture of narcotic drugs and seized material/substance should be considered as a preparation in totality or on the basis of the actual drug content of the specified narcotic drug.

I have heard the learned counsel for the parties.

The first argument raised by the learned counsel for the petitioner regarding the change in the colour of the bag has been duly clarified in the status report filed by way of affidavit of Rajesh Kumar, PPS, Deputy Superintendent of Police, Special Task Force, Rupnagar Range, District SAS Nagar, Mohali and, hence, does not need to be delved into further.

Dealing with the second argument of the learned counsel for the petitioner that this Court in the case of **Anil Kumar (supra)** has referred the matter to a larger Bench and has meanwhile granted interim bail to the petitioner therein and that the question involved in the present case is also the same viz. whether the pure content of the narcotic drug/psychotropic substance alone is to be taken into consideration for determining small or commercial quantity, suffice is to note that the said question stands answered by the three Judge decision of the Supreme Court in **Hira Singh's case (supra)** and reliance by the counsel for the petitioner on order dated 01.10.2018 passed in **Anil Kumar's case (supra)** and the decision in **E. Micheal's case (supra)** is misplaced.

In the present case the recovery from the petitioner is of 1095 injections (395 Rexogesic, Buprenorphine Injection IP 2 ml and 700 vials of Avil 10 ml). The argument raised by the learned counsel for the petitioner that the neutral substance cannot be taken into consideration while determining the small or commercial quantity stands answered by the Supreme Court in the case of **Hira Singh (supra)** wherein it has inter-alia been held as under :

“10. In view of the above and for the reasons stated above,

Reference is answered as under:

(I). The decision of this Court in the case of E. Micheal Raj (Supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

(II). In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity” of the Narcotic Drugs or Psychotropic Substances;

(III). Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O.1055(E) dated 19.10.2001;

(IV). Challenge to Notification dated 18.11.2009 adding “Note 4” to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act.

Consequently, writ petitions and Civil Appeal No.5218/2017 challenging the aforesaid notification stand dismissed”.

The Supreme Court has, thus, expressly held that the decision in the case of **E. Micheal Raj (supra)** taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law. This question having been authoritatively answered by the Supreme Court, the argument raised by the learned counsel for the petitioner on this count cannot be accepted.

In view of the discussion above, the present petition is dismissed. However, it is made clear that any observations made herein shall not be treated as an expression of opinion on the merits of the case.

Dismissed.

October 26, 2020
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(ALKA SARIN)
JUDGE

NOTE:

Whether speaking/non-speaking: Yes/No
Whether reportable: Yes/No