

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL.APPL. No.1029/2019

Judgment reserved on :18.11.2019

Date of decision :28.01.2020

ARVIND KUMAR

.....Applicant

Through: Mr. Sudarshan Rajan,
Advocate.

versus

**THE STATE THROUGH THE INSPECTOR, CENTRAL BUREAU
OF NARCOTICS**

..... Respondent

Through: Mr.SatishAggarwala, SSC with
Mr. Gagan Vaswani, Advocate.
Insp. RadheyShyam, ATO/
Narela.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant Arvind Kumar seeks the grant of bail in terms of Section 439 of the Cr.P.C., 1973 in Sessions Case No.374/2018 in relation to the alleged commission of the offences punishable under Sections 8, 21, 22 and 29 of the NDPS Act, 1985 with it having been alleged that for the entire quantity of seized narcotics and psychotropic substances, Harish Chander, proprietor of M/s Shiv Medicos and the present applicant, proprietor of M/s City Enterprises had not followed

the mandated provisions of Rule 65 of the Drugs and Cosmetics Rules, 1945.

2. Notice of the petition was issued to the Central Bureau of Narcotics i.e. the respondent and both the applicant and the respondent have addressed their submissions qua the prayer made by the petitioner. Reply to the petition has been filed by the respondent. Written submissions on behalf of either side have also been submitted, perused and considered.

3. The allegations that have been made in the Sessions Case No.374/2018 filed by the respondent are to the effect that an information had been received that a person named Harish Chander proprietor of M/s Shiv Medicos (the co-accused presently in judicial custody) at 1706/8, First Floor, Milap Bhawan, Bhagirath Palace, Delhi-06 was selling narcotics and psychotropic medicines illegally at his shop and on search of his shop being conducted, the narcotics and psychotropic medicines were recovered in a huge quantity as detailed in the complaint.

4. The said co-accused Harish Chander as per the complaint was not able to produce any purchase or sale documents for these narcotics and psychotropic medicines which were thus seized under Rule 65 of the Drugs and Cosmetics Rules, 1945 for violation of Rule 65A of the NDPS Act, 1985. The medicines so seized, were to the effect:-

- “i. Alprazolam-2,06,125 tablets***
- ii. Pentazocine inj. - 3,194 ampules***
- iii. Nitrazepam tablet -20,400 tablets.***
- iv. Tramadol- 1,28,880 tablets & capsules***

- v. Diazepam- 1,400 tablets.*
- vi. Diazepam inj. - 380 ampules.*
- vii. Lorazepam-31260 tablets.*
- viii. Chlordiazepoxide - 7,800 tablets.*
- ix. Clonazepam-3,190 tablets.*
- x. Zolpidem- 300 tablets.*
- xi. Buprenorphine inj.- 6,050 ampules.*
- xii. Codeine Phosphate Syrup (100ml)- 9,237 bottles.”,*

and samples were stated to have been drawn from the medicines seized from Sh. Harish Chander, proprietor of M/s Shiv Medicos.

5. During the course of the investigation conducted, the call details record of the co-accused Harish Chander seized from mobile numbers 8368673642 and 9871157024 were obtained from the concerned Nodal Officer and it was found in the CDRs of mobile number 8368673642 that there were frequent calls that had been made with mobile number 9728259445, which was registered in the name of Arvind Taluja, r/o Sonipat Haryana i.e. the present petitioner.

6. As per the complaint filed in Court on the basis of the statement of the accused Harish Chander and the report received from M/s Hariwin Pharma through M/s Laborate Pharmaceuticals, it came to notice that the mobile number 9728259445 mentioned in the bill of M/s City Enterprises, Daryaganj is the same number as mentioned by the co-accused Harish Chander in his statement. A search was thus conducted on 30.07.2018 at M/s City Enterprises, Daryaganj, New Delhi, but nothing incriminating was found nor was anything taken into possession and during the said search neither narcotics nor

psychotropic nor general medicines were found in the shop M/s City Enterprises and the statement of the present petitioner was recorded under Section 67 of the NDPS Act, 1985. Through his voluntary statement recorded on 30.07.2018 written in his own handwriting, the petitioner is stated to have stated that he purchased the narcotics and psychotropic medicines on bill from M/s Hariwin Pharma and had further sold the narcotics and psychotropic medicines without bills illegally to Sh. Harish Chander, the co-accused on a frequent basis and also stated that two coolies namely Kanhaiya and Tiwari used to come to his shop and purchased the narcotics and psychotropic medicines illegally in cash for a higher price than the market rate and that he, the present petitioner did not have the address and mobile number of Kanhaiya and Tiwari. The petitioner is also stated to have admitted that he did not have any record of sale/ purchase of the narcotics and psychotropic medicines and that he had not maintained any sale record of the narcotics and psychotropic substances.

7. The complaint however states to the effect that the sales made by M/s Hariwin Pharma were all made on the basis of the bills in terms of the provisions of Rule 65 of the Drugs and Cosmetics Rules, 1945 including to M/s City Enterprises run by the petitioner herein.

8. As per the averments made in the complaint, in as much as the petitioner had failed to produce the records of sale/ purchase of the seized medicines as mandated under Rule 65 of the Drugs and Cosmetics Rules, 1945, he had thus, violated Rule 65A of the NDPS Rules, 1985.

9. The petitioner was arrested on 30.07.2018 at about 16.30 hours for violation of Sections 8, 21, 22 & 29 of the NDPS Act, 1985 and at the time of his arrest, two mobile phones i.e. I-phone A1530 with mobile number 9728259445 and a Nokia phone TA-1034 with mobile number 8571823948 found in his possession, were recovered.

10. *The averments made in the complaint further indicate that the co-accused Harish Chander had stated in his statement under Section 67 of the NDPS Act, 1985 that he had purchased and sold the narcotics and psychotropic medicines illegally and claimed that a person by the name of Gaurav had supplied him the illegal narcotics and psychotropic medicines and gave the mobile number of that Gaurav being 9728259445. The said mobile number 9728259445 is the mobile number registered in the name of the present petitioner Arvind Taluja, r/o Sonipat Haryana.*

11. The chemical analysis conducted of all samples which had been seized, gave positive findings for narcotics and psychotropic substances except a sample marked K1 and on 31.07.2018 on permission of the Trial Court, the chemical examination of the sample marked K1 was further conducted on 28.09.2018 and as per the CFSL report dated 28.09.2018 received from CFSL, Chandigarh, marked K1 was found positive for psychotropic substance *Buprenorphine*. As per the investigation conducted by the CBN, the Drugs License Form No.20B and 21B of M/s Shiv Medicos showed the name of one Neeraj Arora as a competent person and thereupon, a summon was issued to Mr. Neeraj Arora under Section 67 of the NDPS Act, 1985 and the

statement of Neeraj Arora was recorded, where Neeraj Arora stated that he has never signed the documents which were submitted by the co-accused Harish Chander to the Drugs Controller and stated that the signatures on those documents were not his and that his signatures may be verified from any Government document.

12. The complaint further indicates that a letter was issued to the Branch Manager, Punjab National Bank, Najafgarh Branch for the verification of the signatures of Neeraj Arora but the reply in relation thereto was awaited and that Harish Chander had also stated in his statement dated 23.05.2018 that he never met Neeraj Arora and that Neeraj Arora never came to his shop. No previous involvement of the petitioner was found on verification of the criminal background record.

13. The complaint has further alleged to the effect that a letter was issued to the Bank Manager, YES Bank and ICICI Bank for providing bank details of the petitioner and from the report it was received that there was no payment ever made through any cheque or through any FD from Harish Chander into the account of the petitioner and rather the account statement of Account No. 80063700000484 showed that a heavy amount was debited into the account of Ganesh Medicos, Maharaja Traders, Marcus Laboratories and Mahadev Agencies proprietors of M/s Ganesh Medicos, M/s Marcus Laboratories, M/s Maharaja Traders and M/s Mahadev Agencies and that a sum of Rs.1.8 Crores in cash was found deposited into the account of the petitioner in five months prior to the complaint. It was thus, contended

by the CBN that this indicated that the petitioner was involved in the illegal sales of Narcotics and Psychotropic substances.

14. The complaint vide paragraph 30 thereof specifies the seizures effected of the Narcotics and Psychotropic medicines which had been sold by the petitioner herein to Sh. Harish Chander proprietor of M/s Shiv Medicos in violation of Rule 65 of the Drugs and Cosmetics Rules, 1945 and of consequential violation of conditions of Rule 65A of the NDPS Rules, 1985 and consequentially thereof, of having committed offences punishable under Sections 8, 21, 22 and 29 of the NDPS Act, 1985 in relation to the following medicines:-

“(i) Total contents of seized 2,06,125 Alprazolam tablets in different composition comes to 95.150 Gram on calculating the same.

(ii) Total contents of seized 3214 Pentazocine Injection of different composition comes to 3.214 Kg on calculating the same.

(iii) Total contents of seized 20400 Tablets of Nitrazepam of different composition comes to 204 Gram on calculating the same.

(iv) Total contents of seized 128880 Tablets and Capsules of Tramadol of different composition comes to 32.86872 Kilogram on calculating the same.

(v) Total contents of seized 360 Injection and 1400 Tablets of Diazepam of different composition comes to 729 Gram on calculating the same.

(vi) Total contents of seized 31260 Tablets of Lorazepam of different composition comes to 62.52 Gram on calculating the same.

(vii) Total contents of seized 7800 Tablets of Chlordiazepoxide of different composition comes to 76.3 Gram on calculating the same.

(viii) Total contents of seized 2,06,125 tablets of Clonazepam of different composition comes to 14.38 Gram on calculating the same.

(ix) Total contents of seized 300 Tablets of Zolpidem of different composition comes to 3 Gram on calculating the same.

(x) Total contents of seized 6050 Injections of Buprenorphine of different composition comes to 12.100 Kilogram on calculating the same.

(xi) Total contents of sized 9237 Bottles of Codeine of different composition comes to 923.700 Kilogram on calculating the same.”

15. The complaint also states that both the voluntary statement under Section 67 of the NDPS Act, 1985 of Sh. Harish Chander proprietor of M/s Shiv Medicos and of the present petitioner the proprietor of M/s City Enterprises categorically state that the mandated provisions of Rule 64 of the Drugs and Cosmetics Rules, 1945 had not been adhered to and it has thus, been submitted through the complaint that the same indicated that both the petitioner and Sh. Harish Chander proprietor of Ms/ Shiv Medicos were involved in the illegal business of sale and purchase of Narcotics and Psychotropic substances. It has also been submitted through the complaint that the requisite presumption of the commission of the offence by the petitioner has essentially to be drawn in terms of Section 54 of the NDPS Act, 1985.

16. *The factum of the sale of the medicines as detailed in the complaint as adverted to elsewhere hereinabove by the petitioner of M/s City Enterprises to Harish Chander proprietor of M/s Shiv Medicos without any bills, is not refuted by the petitioner.* The contentions, however, raised on behalf of the petitioner are to the effect that the petitioner has been in custody w.e.f. 30.07.2018 for more than one year and five months and no recoveries of any incriminating medicines have been effected from his commercial premises nor from his residence.

17. The petitioner has further submitted that the injections of Pentazocine, a psychotropic substance sold by the petitioner as claimed by the claimant through its reply to the bail application is only of 300 injections containing 300 gms of the psychotropic substance and as per Government notification S.O.1055 (E) dated 19.10.2001, the commercial quantity prescribed of Pentazocine is 500 gms and that thus, the embargo under Section 37 of the NDPS Act, 1985 would not apply in relation to the said psychotropic substance. Furthermore, it has been submitted on behalf of the petitioner that there is no averment in the complaint of the respondent that Pentazocine was sold by the petitioner.

18. *Inter alia* it has been submitted on behalf of the petitioner that as per the reply submitted by the respondent itself, the petitioner had dealt with the drug- Tramadol only on 01.02.2018, 28.11.2017, 02.04.2018 as purchased by the petitioner from M/s Hariwin Pharma and that the drug- Tramadol did not fall within the category of a

psychotropic substance till the date 26.04.2018 when it was so notified vide notification S.O. 1762 (E) dated 26.04.2018 with the commercial quantity being prescribed as 250 gms and that vide notification No. S.O.3448 (E) dated 13.07.2018, it had been specified that the licence manufacturers, importers and exporters of Tramadol would be covered under the provisions of the notification dated 26.04.2018 after the expiry of a period of 120 days from the date of its publication in the official Gazette and it was thus, submitted that the recoveries in relation to Tramadol, do not bring forth any embargo to the grant of bail in terms of Section 37 of the NDPS Act, 1985 at all.

19. The petitioner further submits that he is an authorized seller of syrups containing codeine and has sold syrups containing codeine to another authorized wholesaler/ retailer i.e. Mr. Harish Chander proprietor of M/s Shiv Medicos and thus, he is protected for the reason that the codeine syrups have been sold for therapeutic purposes and that the medicines sold, do not have more than 100 mg of the drug per dosage unit and the concentration is not more than 2.5 per cent which is thus exempted through the list of manufactured Narcotics Drugs as per Government of India Notification No. S.O.826 (E) dated 14.11.1985 and S.O.40 (E) dated 29.01.1993 and in as much as vide entry at serial no. 35 thereof, it has been stipulated therein to the effect:-

35.	Methyl morphine (commonly known as ' Codeine ') and Ethyl morphine and theirsalts (including Dionine), all dilutions and preparations except those which arecompounded with one or more other ingredients and containing not more than100 milligrammes of the drug per dosage unit and with a concentration of notmore than 2.5 % in undivided preparations and which have been established inTherapeutic practice.
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20. The petitioner has further submitted that the responses to RTIs from the Drugs Controller General India also show that the preparations containing codeine and its salts also do not fall under the provisions of the NDPS Rules, 1985 but that they fall under Schedule H of the Drugs and Cosmetics Rules, 1945 and are governed by the said rules and that sale of these drugs does not attract the provisions of the NDPS Rules, 1985 nor the Drugs and Cosmetics Rules, 1945, however, these formulations are prescription drugs and are to be dispensed on prescription for Registered Medical Practitioners only and in as much as, the petitioner in the instant case has sold the codeine cough syrups only to an authorized dealer, the penal provisions of the NDPS Act, 1985 cannot be held to have been attracted in the instant case. *Inter alia* it has been submitted on behalf of the petitioner that he has a wife and two daughters at the verge of a financial breakdown and that he has no previous criminal antecedents and had merely sold the medicines to the authorized dealer, wholesaler or retailer.

21. The Central Bureau of Narcotics vide its reply has vehemently opposed the prayer made by the petitioner seeking the grant of bail submitting to the effect that the embargo under Section 37 of the NDPS Act, 1985 applies wholly in the instant case and that it is applicable to all conspirators acting in furtherance of their common object. It has been submitted categorically by the respondent that the petitioner had illegally sold 406460 bottles of 100 ml each of codeine based syrup containing 40646 Kgs of Narcotic Drug i.e. codeine in

violation of the provisions of Section 8(c) read with Sections 21 and 29 of the NDPS Act, 1985 apart from having also sold illegally 532800 capsules of Tramadol (containing 205.128 kgs of a psychotropic substance) and 300 injections of Pentazocine (containing 300 gram Psychotropic Substance) in violation of the provisions of Rule 65 of Drug and Cosmetic Rules and has thus, violated the provisions of Rule 65A of NDPS Rules, 1985 read with Section 8(c), 22 and 29 of the NDPS Act, 1985.

22. The respondent has further submitted that the co-accused Harish Chander who had been found in possession of the illegally sold capsules of Tramadol, bottles of codeine and injections of Pentazocine in violation of the provisions of Rule 65 of the Drugs and Cosmetics Rules, 1945 had disclosed that he had purchased the same from the petitioner and the CDR of Mr. Harish Chander showed that Mr. Harish Chander was in constant touch with the petitioner and that the petitioner was the supplier of the illegal drugs qua which the raid was conducted at the premises of Mr. Harish Chander. It has been submitted on behalf of the Central Bureau of Narcotics that as laid down by the Hon'ble Supreme Court in ***"State of Punjab Vs. Rakesh Kumar"*** in CRL.A. No.1512/2018 dated 03.12.2018 the proceedings under the NDPS Act can be lodged in addition to proceedings under the Drugs and Cosmetics Act, 1940.

23. Reliance has also been placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in case ***"Union of India and Another Vs. Sanjeev V Deshpandey"*** in Crl.A. No.660/2007 dated

12.08.2014 wherein it has been laid down that the Drugs and Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase etc. of the drugs generally whereas the NDPS Act, 1985 deals with more specific class of drugs and is therefore a special law on this subject but that the provisions of the NDPS Act, 1985 operate in addition to the provisions of the 1940 Act. The observations of the Hon'ble Supreme Court in paragraph 35 of the said verdict read to the effect:-

“35. In view of our conclusion, the complete analysis of the implications of Section 8015 of the Act is not really called for in the instant case. It is only required to be stated that 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.”

24. The respondent has further submitted that the petitioner has accepted through his voluntary statement recorded under Section 67 of the NDPS Act, 1985 that he did not have any record of the sale/purchase of the narcotics and psychotropic medicines to Sh. Harish Chander proprietor of M/s Shiv Medicos and likewise Sh. Harish Chander too had accepted that he purchased the said narcotics and psychotropic medicines illegally from the petitioner. Reliance has thus, been placed on behalf of the respondent on the verdicts in ***“Sayeed Abu Ala Vs. Narcotic Control Bureau”*** in **Bail Appln. No.689/2007** dated 07.08.2008 to contend to the effect that the

statements made by any one of the conspirators in furtherance of the common object, is admissible against all.

25. It has been submitted further on behalf of the respondent that Section 80 of the NDPS Act, 1985, which reads as under:-

“80. Application of the Drugs and Cosmetics Act, 1940 not barred.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.”

makes it apparent that the provisions of the NDPS Act, 1985 and rules made thereunder are in addition to and not in derogation of the Drugs and Cosmetics Act, 1940 nor the rules framed thereunder and thus, it is submitted on behalf of the respondent that for violation of the provisions of the Drugs and Cosmetics Act, 1940 and rules framed thereunder, action can be initiated for an offence punishable under the NDPS Act, 1985.

26. The respondent has further submitted that the Central Government has framed rules with regard to psychotropic substances as a power conferred by Section 9 read with Section 76 of the NDPS Act, 1985 and that Rule 65A of the NDPS Rules, 1985 states to the effect:-

“65-A. Sale, Purchase, consumption or use of psychotropic substances.- No person shall sell, purchase, consume or use any psychotropic substances except in accordance with the Drugs and Cosmetic Rules, 1945.

Provided that sale, purchase, consumption or use of a psychotropic substance specified in Schedule I shall be only for the purposes mentioned in Chapter VIIA.”

27. It has thus been submitted on behalf of the respondent that Rule 65(5)(i) of the Drugs and Cosmetics Rules, 1945 prescribes as under:-

“65. Condition of licences.-

.....

.....

(5)(1) Subject to the other provisions of these rules the supply of a drug by wholesale shall be made against a cash or credit memo bearing the name and address of the licensee and his licence number under the Drugs and Cosmetics Act in which the following particulars shall be entered:---

(a) the date of sale.

(b) the name, address of the licensee to whom sold and his sale licence number. In case of sale to an authority purchasing on behalf of Government, or to a hospital, medical, educational or research institution or to a Registered Medical Practitioner for the purpose of supply to his patients the name and address of the authority, institution or the Registered Medical Practitioner as the case may be,

(c) the name of the drug, the quantity and the batch number,

(d) the name of the manufacturer,

[(e) the signature of the competent person under whose supervision the sale was effected.]”,

and that thus, there had been a total violation in the instant case by the petitioner herein by sale of the capsules of Tramadol containing 205.128 kgs of a psychotropic substance and 300 injections of Pentazocine (containing 300 gram Psychotropic Substance) in violation of the provisions of Rule 65 of Drug and Cosmetic Rules and

that there has thus, been a violation of the provisions of Rule 65A of NDPS Rules, 1985.

28. The respondent has further submitted that the petitioner has also purchased a huge amount of narcotics and psychotropic Drugs for which he has made payments vide RTGS/ cheque to firms M/s Ganesh Medicos, Maharaja Traders, Marcus Laboratories and Mahadev Agencies but he has not produced any purchase/ sale documents or the ledger accounts and that there was a cash deposit of Rs.1.80 Crore made in the bank account of M/s City Enterprises of which the petitioner herein is the proprietor which amount was deposited from the period 01.03.2018 to 10.07.2018 and it was thus contended on behalf of the respondent that the fact of huge cash deposit in the bank account coupled with the fact of non maintenance of sale and purchase records clearly indicated that the petitioner's dealings were not above board and rather that he was involved in the illegal business. It was submitted through the written synopsis dated 13.12.2019 filed on behalf of the respondent that the petitioner had not provided any purchase/ sale documents in the ledger accounts qua these firms but that investigation with them was on and would reveal diversion of medicines as the petitioner has stated in his statement dated 30.07.2018 and that he has sold the medicines without bills.

29. It was submitted on behalf of the respondent i.e. the Central Bureau of Narcotics that though, Tramadol was declared a psychotropic substance on 26.04.2018 to control its abuse/ misuse in exercising of powers conferred under Section 3 of the NDPS Act,

1985 yet the petitioner had been able to procure 205.128 kgs of a psychotropic substance i.e. 532800 capsules of Tramadol prior to 26.04.2018 but there was nothing on record to show that the petitioner had sold the drugs prior to 26.04.2018 i.e. the date on which the drug was declared a psychotropic substance and that it was thus to be presumed in terms of Section 54 of the NDPS Act, 1985 that the petitioner had committed such offence. Furthermore, it was submitted on behalf of the respondent qua the contention of the petitioner that codeine syrup did not fall within the definition of a Narcotic Drug that the same would apply only if the codeine syrup was actually sold or dealt with for a therapeutic use and since all the bottles of codeine syrup had been sold without any bills and the sale was in relation to more than the prescribed quantity and was a commercial quantity, there was nothing to suggest that those bottles were required in such huge quantum for a therapeutic use. Reliance in relation thereto has been placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in "***Mohd. Sahabuddin and Another Vs. State of Assam***" in CRL.A. No.1602/2012 dated 05.10.2012 to contend that where the requirement of the codeine syrup, being meant for therapeutic practices was not satisfied, in that event the entire quantity of the drug is to be calculated for the purpose of proceedings under the NDPS Act, 1985 and as a consequence thereof, the penal provisions of the NDPS Act, 1985 would *prima facie* apply.

30. The Central Bureau of Narcotics has contended that the petitioner had procured 406460 bottles of 100 ml each of codeine

based syrup containing 40646 Kgs of Narcotic Drug i.e. codeine using his drug licence and for having sold them illegally for trafficking.

31. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Allahabad in ***"Ashok Kumar Vs. Union of India and Ors."*** 2014 SCC OnLine All 16411 to contend that in that case, possession of phensedyl cough syrup containing codeine within the prescribed quantity with licence was held not sufficient to invite the penalties under the NDPS Act, 1985 and that phensedyl cough syrup was required to be considered as a drug under the Drugs and Cosmetics Act. In relation thereto, the Central Bureau of Narcotics has contended as adverted to hereinabove that cough syrup containing codeine would not fall under the definition of a Narcotic Drug only if the cough syrup was actually sold or dealt with for a therapeutic use and once there was evidence to suggest that the cough syrup was diverted for abuse purpose and not for a therapeutic use, then the provisions of the NDPS Act, 1985 would come into play and the whole quantity of the narcotic drug is to be calculated for the purpose of proceedings under the NDPS Act, 1985.

32. In this context, the spirit of the verdict of the Hon'ble Supreme Court in ***"Mohd. Sahabuddin and Another Vs. State of Assam"*** (2012) 13 SCC 491 would wholly apply as rightly contended on behalf of the Central Bureau of Narcotics and the entire quantum of the syrup containing codeine, sold by the petitioner without bills to Sh. Harish Chander proprietor of M/s Shiv Medicos would have to be taken into account. Furthermore, in terms of the verdict of the Hon'ble

Supreme Court in ***“Union of India Vs. Shiv Shanker Kesari” (2007) 7 SCC 798*** in terms of Section 37(1)(b) of the NDPS Act, 1985, the Court would have to take into account the statement recorded under Section 67 of the NDPS Act, 1985 and in the instant case, the statements recorded under Section 67 of the NDPS Act, 1985 of both the petitioner and the co-accused Harish Chander proprietor of M/s Shiv Medicos indicate that there has been a *prima facie* illegal sale, supply of the drugs containing codeine phosphate by the petitioner herein to Sh. Harish Chander proprietor of M/s Shiv Medicos without any bills and documents and in such circumstances, it cannot be held that there are reasonable grounds for believing that the petitioner is not guilty of the commission of any offence in relation to a commercial quantity of illegal sale, purchase and supply of a Narcotic Drug containing codeine in contravention of Section 8(c) of the NDPS Act, 1985 which provides as follows:-

“8. Prohibition of certain operations.—No person shall

....

...

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

for as laid down by the Hon’ble Supreme Court in ***“Union of India and Anr. Vs. Sanjeev V.Deshpandey” (2014) 13 SCC 1*** that the provisions of the NDPS Act, 1985 operate in addition to the 1940 Act,

i.e., the Drugs and Cosmetics Act, 1940 which deals with various operations of manufacture, sale, purchase etc. of drugs and in terms of Rule 65(5), requires the supply of a drug by wholesale to be made against a cash/ credit memo bearing the name and address of the licensee and its licence number under the Drugs and Cosmetics Act, 1940 in the manner prescribed under Rule 65(5)(i) of the said Rules, which in the instant case has *prima facie* admittedly not been complied with, in as much as, as laid down by the Hon'ble Supreme Court in "***State of Punjab Vs. Rakesh Kumar***" in CRL.A. No.1512/2018 (arising out of SLP (CRL) No.4762 of 2018) with CRL.A. No.1514/2018 (arising out of SLP (CRL) No.4816 of 2018), CRL.A. No.1515/2018 (arising out of SLP (CRL) No.4817 of 2018), CRL.A. No.1517/2018 (arising out of SLP (CRL) No.4869 of 2018), CRL.A. No.1516/2018 (arising out of SLP (CRL) No.4818 of 2018), CRL.A. No.1513/2018 (arising out of SLP (CRL) No.4796 of 2018), CRL.A. No.1518/2018 (arising out of SLP (CRL) No.4881 of 2018), CRL.A. No.1521/2018 (arising out of SLP (CRL) No.5032 of 2018), CRL.A. No.1530/2018 (arising out of SLP (CRL) No.5897 of 2018), CRL.A. No.1520/2018 (arising out of SLP (CRL) No.4968 of 2018), CRL.A. No.1526/2018 (arising out of SLP (CRL) No.5893 of 2018), CRL.A. No.1525/2018 (arising out of SLP (CRL) No.5892 of 2018), CRL.A. No.1519/2018 (arising out of SLP (CRL) No.4953 of 2018), CRL.A. No.1528/2018 (arising out of SLP (CRL) No.5895 of 2018), CRL.A. No.1523/2018 (arising out of SLP (CRL) No.5886 of 2018), CRL.A. No.1527/2018 (arising out of SLP (CRL) No.5894 of 2018), CRL.A. No.1524/2018 (arising out of SLP (CRL) No.5891 of 2018),

CRL.A. No.1529/2018 (arising out of SLP (CRL) No.5896 of 2018), CRL.A. No.1522/2018 (arising out of SLP (CRL) No.5877 of 2018), CRL.A. No.1533/2018 (arising out of SLP (CRL) No.7223 of 2018), CRL.A. No.1532/2018 (arising out of SLP (CRL) No.7222 of 2018), CRL.A. No.1536/2018 (arising out of SLP (CRL) No.7228 of 2018), CRL.A. No.1531/2018 (arising out of SLP (CRL) No.7221 of 2018), and CRL.A. No.1534/2018 (arising out of SLP (CRL) No.7225 of 2018) and CRL.A. No.1535/2018 (arising out of SLP (CRL) No.7227 of 2018) vide verdict dated 03.12.2018 of the Hon'ble Supreme Court whereby it was observed vide paragraphs 15 & 16 thereof to the effect:-

“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.”

it has thus been categorically laid down that the provisions of the NDPS Act, 1985 cannot be read in exclusion to the Drugs and Cosmetics Act, 1940 and that if the action of an accused amounts to a *prima facie* violation of Section 8 of the NDPS Act, 1985, the circumstances and the gravity of the offence does not entitle such an accused to be granted bail.

33. In the circumstances, there is no ground for grant of bail and the application is thus, declined.

ANU MALHOTRA, J.

JANUARY 28, 2020

'Neha Chopra'



सत्यमेव जयते