

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on : 23/09/2021 (MCRC Nos. 4648/2021, 4975/2021, 5145/2021, 5165/201, 5347/201, 5378/2021, 5446/2021, 5458/2021, 5502/2021, 5911/2021, 6197/2021, 6325/2021, 6341/2021, 6430/2021, 5310/2021 and 5969/2021)

07/10/2021 (MCRC Nos. 6578/2021, 6603/2021 and 6979/2021)

Order passed on :29 /10/2021

MCRC No. 4648 of 2021

- Basruddin @ Raju S/o Moh. Nasir Aged About 36 Years, R/o Mohalla Mominpura, Near Samlaya Mandir, Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Non-applicant

MCRC No. 4975 of 2021

1. Akash Kurre Son of Chhannu Lal Kurre, Aged About 20 Years, R/o. In Front of Mangal Bhawan, Mini Basti, Jarhabhatha, Police Station Civil Line, Bilaspur, District Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh
2. Akash Tandan Son of Darbari Aged About 18 Years, R/o. Near Jai Stambh, Mini Basti, Jarhabhatha, Police Station Civil Line, Bilaspur, District Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh

---- Applicants

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Civil Line, Bilaspur, District Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh

---- Non-applicant

MCRC No. 5145 of 2021

- Ritesh Kare S/o Late Sharad Kare Aged About 25 Years, R/o Rajiv Gandhi Chowk, Majhwapara, Jarhabhata, Bilaspur, Tahsil and District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Civil Line Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Non-applicant

MCRC No. 5165 of 2021

- Ajay Kumar Sarthi @ Motu S/o Balkumar, Aged About 26 Years, R/o Village Jarhi, Police Station Bhatgaon, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through- Station House Officer, Police Of Police Station Pratappur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

---- Non-applicant

MCRC No. 5347 of 2021

- Sangeet Jaiswal @ Golu S/o Santosh Kumar Jaiswal, Aged About 26 Years, R/o Village- Pratappur, Police Station- Pratappur, Tahsil- Pratappur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Of Police Station- Pratappur, District- Surajpur, Chhattisgarh.

---- Non-applicant

MCRC No. 5378 of 2021

- Harishankar Sahu S/o Kartikram Sahu, Aged About 19 Years, R/o Village Bardwar Police Station Kota District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through - Station House Officer, Police Station Kota District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Non-applicant

MCRC No. 5446 of 2021

- Dayaram Yadav @ Golu S/o Rahul Yadav, Aged About 30 Years, R/o Moulipara Talibandha, Raipur District - Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station - Telibandha, District - Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Non-applicant

MCRC No. 5458 of 2021

- Sunny Kashyap Son of Dileep Kashyap, Aged About 35 Years, Resident of Vinoba Nagar, Police Station- Tarbahar, District - Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station- Sirgitti, District - Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh

---- Non-applicant

MCRC No. 5502 of 2021

- Sunil Yadav S/o Jawahar Lal Yadav, Aged About 39 Years, R/o Gokulganj, Sitamani Korba, Tahsil and District Korba (Chhattisgarh), District : Korba, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through- Station House Officer, Police Station Kotwali, District Korba (Chhattisgarh), District : Korba, Chhattisgarh

---- Non-applicant

MCRC No. 5911 of 2021

- Vikki Das Urf Raftar S/o Nanki Das Manikpuri Aged About 25 Years R/o Near Vilasha Garden, Atal Aavas Koni, Thana- Koni, District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Thana-Civil Line, Bilaspur, District-Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Non-applicant

MCRC No. 6197 of 2021

- Mohd. Anwar Hussain, S/o Abrar Hussain (wrongly mentioned as Mohd. Awrara in impugned order), Aged About 35 Years, R/o - Barkuhi (wrongly mentioned as Badkahi in impugned order), Tehsil - Parasiya (wrongly mentioned as Parsiya in impugned order), Police Station - Chandameta, District - Chhindwara (M.P.), District : Chhindwara, Madhya Pradesh

---- Applicant

Versus

- State Of Chhattisgarh, Through - Station House Officer, Police Station - Chilfi, District - Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

---- Non-applicant

MCRC No. 6325 of 2021

- Sevakram Barik S/o Jagatram Barik, Aged About 32 Years, R/o Khairpali, Police Station Ambabhuna, District Bargarh, Odisha. (As Per F.I.R.)

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Sariya, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

---- Non-applicant

MCRC No. 6341 of 2021

- Vijay Verma Alias Daddu S/o Late Kishore Verma, Aged About 27 Years, R/o Hemunagar, Near Chandan Pan Shop, P.S. Torva, District Bilaspur (C.G.), District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, P.S. Torva, District Bilaspur (C.G.), District : Bilaspur, Chhattisgarh

---- Non-applicant

MCRC No. 6430 of 2021

- Bind Kumar S/o Ramnarayan, Aged About 23 Years, R/o Village - Sonhat, Police Station- Raghunathnagar, Tehsil- Wadrufnagar, District- Balrampur-Ramanujganj, Chhattisgarh, District : Balrampur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through- Station House Officer, Police Out Post Basdeiee, Police Station- Surajpur, District- Surajpur, Chhattisgarh, District : Surajpur, Chhattisgarh

---- Non-applicant

MCRC No. 5310 of 2021

- Nilesh Kumar Tiwari S/o Dhruvnath Tiwari, Aged About 26 Years, By Caste - Brahman, R/o Village- Mahora, Junapara, Thana and Tahsil- Patna, District- Koriya, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Applicant

Versus

- The State Of Chhattisgarh Through Police Station- Patna, District- Koriya, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Non-applicant

MCRC No. 5969 of 2021

- Santosh Singh S/o Bechuram Singh, Aged About 42 Years, Caste Gond, R/o - Chhindiya Bagichapara, Thana Patna, District - Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through - Station House Officer, Police Station - Patna, District -Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Non-applicant

MCRC No. 6578 of 2021

- Santosh Sahu S/o Vishwanath Sahu, Aged About 30 Years, Caste Sahu, Occupation Agriculture, R/o Village- Sonhat, P.S. Raghunath Nagar, District- Balrampur (C.G.), District : Balrampur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Outpost- Basdei, P.S. Surajpur, District- Surajpur (C.G.), District : Surajpur, Chhattisgarh

---- Non-applicant

MCRC No. 6603 of 2021

- Deepak Seel S/o Pavitro Seel, Aged About 20 Years, R/o Village Bhagwanpur, Turrapani, P.S. Gandhi Nagar, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through S.H.O., Police Station Basantpur, District Balrampur Ramanujanj Chhattisgarh., District : Balrampur, Chhattisgarh

---- Non-applicant

MCRC No. 6979 of 2021

- Md. Riyasul S/o Md. Husain, Aged About 40 Years, Caste Muslim, R/o Ward No. 2 Masjid Dafai Pandopara, Police Station Patna, District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The S.H.O., Police Station Patna, District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Non-applicant

For Applicant(s) –Mr. Shakti Raj Sinha, Advocate (in MCRC No.4648/2021), Mr. Rajeev Kumar Dubey, Advocate (in MCRC No.4975/2021), Mr. K.P.S. Gandhi, Advocate (in MCRC No.5145/2021), Mr. Anil Gulati, Advocate (in MCRC Nos. 5165/2021 and 5347/2021), Mr. Chandra Kumar, Advocate (in MCRC No.5378/2021), Mr. C.R. Sahu, Advocate (in MCRC No.5446/2021), Mr. Kamlesh Ku. Pandey, Advocate (in MCRC No.5458/2021), Mr. Suresh Tandon, Advocate (in MCRC No.5502/2021), Mr. Rajendra Kumar Patel, Advocate (in MCRC No.5911/2021), Mr. Prasoon Agrawal, Advocate (in MCRC No.6197/2021), Mr. Ashish Gupta, Advocate (in MCRC No.6325/2021), Mr. Awadh Tripathi, Advocate (in MCRC No.6341/2021), Mr. Arun Kumar Shukla, Advocate (in MCRC Nos.6430/2021), Mr. Parag Kotecha, Advocate (in MCRC No.5310/2021), Mr. Vijay Kumar Sahu, Advocate (in MCRC No.5969/2021), Mr. Sushil Dubey, Advocate (in MCRC No.6578/2021), Mr. Pushkar Sinha, Advocate (in MCRC No.6603/2021), Mr. Ashok K. Shukla, Advocate (in MCRC No.6979/2021).

For Non-applicant/State – Ms. Hamida Siddiqi, Deputy Advocate General, Mr. Sameer Oraon, Govt. Advocate, Mr. Ajay Kumarani and Ms. Shivali Dubey,

Panel Lawyers.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

29-10-2021

1. These 19 applications are being decided by this common order as they relate to the same point of determination.
2. These applications have been filed by applicants for grant of regular bail as they have been arrested on the following dates in connection with following crime numbers and offences registered in the police stations mentioned in the table below:-

S.No.	MCRC No.	Date of arrest	Crime No.	Offence	Police Station
1.	MCRC No. 4648 of 2021 (applicant Basruddin @ Raju)	06-03-2021	260/2021	U/s 21 B of the NDPS Act	P.S. Ambikapur, District Surguja (C.G.)
2.	MCRC No. 4975 of 2021 (applicants Akash Kurre and Akash Tandon)	30-06-2021	639/2021	U/s 21 & 22 of NDPS Act	P.S. Civil Line Bilaspur, District Bilaspur (C.G.)
3.	MCRC No. 5145 of 2021 (applicant Ritesh Kare)	29-06-2021	639/2021	U/s 21, 22 of the NDPS Act	P.S. Civil Line, Bilaspur, District Bilaspur (C.G.)
4.	MCRC No. 5165 of 2021 (applicant Ajay Kumar Sarthi @ Motu)	25-02-2021	52/2021	U/s 21(C) of the NDPS Act	P.S. Pratappur, District Surajpur (C.G.)
5.	MCRC No. 5347 of 2021 (applicant Sangeet Jaiswal @ Golu)	14-06-2021	111/2021	U/s 21(C) of NDPS Act	P.S. Pratappur, District Surajpur (C.G.)
6.	MCRC No. 5378 of 2021 (applicant Harishankar Sahu)	02-07-2021	403/2021	U/s 21 B of the NDPS Act	P.S. Kota, District Bilaspur (C.G.)
7.	MCRC No. 5446 of 2021 (applicant Dayaram)	29-06-2021	232/2021	U/s 21(B), 22 of NDPS Act	P.S. Telibandha, District Raipur (C.G.)

	Yadav @ Golu				
8.	MCRC No. 5458 of 2021 (applicant Sunny Kashyap)	10-07-2021	333/201	U/s 21(C) of the NDPS Act	P.S. Sirgitti, District Bilaspur (C.G.)
9.	MCRC No. 5502 of 2021 (applicant Sunil Yadav)	10-07-2021	627/2021	U/s 22-C of the NDPS Act	P.S. Kotwali, Korba, District Korba (C.G.)
10.	MCRC No. 5911 of 2021 (applicant Vikky Das Urf Raftar)	10-01-2021	53/2021	U/s 21, 22, 29(2) of the NDPS Act	P.S. Civil Lines, Bilaspur, District Bilaspur (C.G.)
11.	MCRC No. 6197 of 2021 (Mohd. Anwar Hussain)	18-01-2021	5/2021	U/s 21(C) of the NDPS Act	P.S. Chilfi, District Kabirdham (C.G.)
12.	MCRC No. 6325 of 2021 (applicant Sevakram Barik)	08-08-2021	168/2021	U/s 21(B) of the NDPS Act	P.S. Sariya, District Raigarh (C.G.)
13.	MCRC No. 6341 of 2021 (applicant Vijay Verma Alias Daddu)	23-04-2021	148/2021	U/s 21 and 22 of the NDPS Act	P.S. Torva, District Bilaspur (C.G.)
14.	MCRC No. 6430 of 2021 (applicant Bind Kumar)	15-06-2021	268/2021	U/s 21(C) of the NDPS Act	Police Out Post Basdeiee, P.S. Surajpur, District Surajpur (C.G.)
15.	MCRC No. 5310 of 2021 (applicant Nilesh Kumar Tiwari)	07-07-2021	184/2021	U/s 22(C) of the NDPS Act	P.S. Patna, District Koriya (C.G.)
16.	MCRC No. 5969 of 2021 (applicant Santosh Singh)	07-07-2021	184/2021	U/s 22(C) of the NDPS Act	P.S. Patna, District Koriya (C.G.)
17.	MCRC No. 6578 of 2021 (applicant Santosh Sahu)	15-06-2021	268/2021	U/s 21(C) of the NDPS Act	Out Post Basdei, P.S. Surajpur, District Surajpur (C.G.)
18.	MCRC No. 6603 of 2021 (applicant Deepak Seel)	10-07-2021	101/2021	U/s 22(C) of the NDPS Act	P.S. Basantpur, District Balrampur-Ramanujanj (C.G.)
19.	MCRC No. 6979 of 2021 (Md. Riyasul)	07-08-2021	236/2021	U/s 22(C) of the NDPS Act	P.S. Patna, District Koriya (C.G.)

3. It is submitted by learned counsel for the applicants in all these cases that they have been falsely implicated in these cases. The FSL that are present in the cases are based only on physical examination, of the medicines and drugs seized, no chemical analysis has been done. The quantity of codeine phosphate present in any medicinal preparation when is not exceeding 2.5% then the same will not be covered under the definition of manufactured drugs as per notification dated 21-06-2011, which shall not be regarded as a prohibited drug, therefore, possession of such medicinal drugs is not an offence under the NDPS Act. The medicines seized are the proprietary medicines manufactured by reputed pharma companies which are available in any medical stores. Therefore, these applicants have not committed any offence. Hence, it is prayed that they may be granted bail.

Reliance has been place on the judgment of Delhi High Court in the bail application No.645/2020 (Iqbal Singh Vs. State) decided on 31-07-2020, in which the applicant/accused was in possession of 57 bottles of cough syrup. having content of codeine phosphate, learned Delhi High Court has granted bail to the accused. In a similar case High Court of Jammu and Kashmir in the case of **Tanvir Ahmed Rath and another Vs. Union Territory of Jammu and Kashmir**, 2020 SC OnLine J&K 559 has granted bail to the accused persons.

Learned counsel for the applicants also placed reliance on the judgment of Delhi High Court in the matter of **Mohd. Ahsan Vs. Customs**, 2021 SCC OnLine Del 3465, in which the learned single Bench has referred the matter for consideration to larger Bench on the questions, whether in cases especially related to manufactured drug with a miniscule percentage of a narcotic substance, the weight of the neutral substance ought to be ignored while determining the nature of quantity seized i.e. small, commercial or in between and other two questions. The learned Delhi High Court has granted interim bail to the applicant pending the consideration of the reference by the larger Bench.

Therefore, in all the present cases the applicants are entitled for bail and there applications be allowed.

4. Learned counsel for the State/non-applicant opposes the applications and the submission made in their support. It is submitted that according to the definition of psychotropic substance 'any substance natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule are psychotropic substances. The Schedule specifically notifies the drug codeine in serial No.28 of the Notification for small and commercial quantity, therefore, without any doubt presence of codeine phosphate in the articles seized makes it psychotropic substance. Note No.4 of the notification for small and commercial quantity was added a movement in the year 2009 according to which content of psychotropic substance in the mixture shall not be considered separately and the volume and weight of the entire mixture has to be taken into consideration. Relying on the judgment of Hon'ble the Supreme Court in the matter of **Hira Singh and another Vs. Union of India and another**, 2020 SCC OnLine SC 382, it is submitted that Hon'ble the Supreme Court has held the validity of Note No.4 added by amendment in the Notification for small and commercial quantity.

It is also submitted that the article seized from the applicants is covered under the definition of manufactured drug under Section 2(xi) of the Act, 1985. The FSL report, present in each case, has clearly reported about presence of psychotropic substance in each of the medicines. The applicant in all the cases do not have any pharma license for possession of the same. Therefore, their possession of such medicines having content of psychotropic substance is clearly illegal.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **State of Kerala Etc. Vs. Rajesh Etc.**, passed in Criminal

Appeal No(s) 154-157 of 2020 decided on 24-01-2020, AIR 2020 SC 72: 2020 12 SCC 122. Reliance has been further placed on the judgment of the High Court of Rajasthan in the matter of **Gavranjeet Singh @ Gavrana Vs. State**, 2017 SCC OnLine Rajasthan 3511.

Reliance has been also placed on the order of High Court of Chhattisgarh in the matter of Bheem @ Suraj Soni Vs. State of Chhattisgarh in **Misc. Criminal Case No.1192 of 2020** delivered on 05-08-2020 and on the order dated 09/06/2020 of Chhattisgarh High Court passed in **Misc. Criminal Case No.2235 of 2020** (Jatin Akash Singh Vs. State of Chhattisgarh).

It is submitted that in similar cases the prayer for bail has been rejected or the bail granted by the High Court has been cancelled by Hon'ble the Supreme Court. It is also submitted that the order of Delhi High Court is per incuriam looking to the view already expressed by Hon'ble the Supreme Court and other High Courts in this respect. Further, Delhi High Court has in the case of **Mohd. Ahsan Vs. Customs** (supra) not given any decision in the question of validity of Note No.4 of the Notification of small and commercial quantity which has already been answered by Hon'ble the Supreme Court in the case of **Hira Singh and another Vs. Union of India and another** (supra). Therefore, the neutral substance present along with the psychotropic substance is also to be included in calculation of the total amount of the psychotropic substance. Reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **Selvi and others Vs. State of Karnataka**, (2010) 7 SCC 263 it is submitted that the standard of general acceptance has been discussed and defined in this case, which has to be followed in the present cases. Therefore, there is no ground present for consideration on grant of bail to the applicants. None of the applicants is entitled for grant of bail as the quantity seized from each of the applicants is commercial quantity and the restrictions of Section 37 of the N.D.P.S. Act are clearly applicable and there is no ground present to hold

that any of these applicants has not committed the offence and they are innocent.

5. The prosecution case in MCRC No.5502 of 2021 is this, that the police conducted a raid in the house of applicant Sunil Yadav and on search being made, 410 bottles of Onerex Codine cough syrup and Zincsirex cough syrup, total volume being 41 litres, was seized from the possession of applicant. On this basis, Crime No.627/2021 for commission of offence under Section 22-C of the NDPS Act was registered.

The prosecution case in MCRC No.6325 of 2021 is this, that seizure of 43 bottles of cough syrup having content of Codeine Phosphate, which is prohibited under NDPS Act, was made from the possession of applicant. The total volume being 4.3 litres was seized from the possession of the applicant. On this basis, police registered Crime No.168/2021 under Section 21B of NDPS Act.

The prosecution case in MCRC No.6197 of 2021 is this, that the police made seizure of 1500 vials of Bruprenophrine injection. The total volume being 3 litre was seized from the possession of applicant Md. Anwar Hussain and one co-accused person.

The prosecution case in MCRC No.4648 of 2021 is this, that the police made seizure of 17 bottles of RC Cough Syrup. Each bottle containing 100 ml and having content of Codeine Phosphate, which is prohibited under NDPS Act. The total volume being 1.7 litre was seized from the possession of this applicant.

The prosecution case in MCRC No.5969 of 2021 is this, that police made seizure of 95 numbers of T-Gesic injection having content of Buprenorphine Hydrochloride. The total volume of liquid in injection seized from the possession of this applicant was 190 ml.

The prosecution case in MCRC No.6430 of 2021 is this, that 83 numbers of Rexogesic injection each of 2ml having content of Buprenorphine was seized from the possession of co-accused, who was using motorcycle of this applicant. There is no seizure of any article from possession of this applicant. Motorcycle being registered in the name of this applicant, hence, applicant has also been arrayed as an accused in this case.

The prosecution case in MCRC No.5310 of 2021 is this, that seizure of 95 numbers of T-Gesic injection having content of Buprenorphine Hydrochloride, which is prohibited under NDPS Act was made by the police. Total volume of liquid in injection seized from the possession of this applicant was 190 ml.

The prosecution case in MCRC No.5347 of 2021 is this, that seizure of 24 bottles of cough syrup Phencyrex each containing 100ml having content of Codeine Phosphate. The total volume being 2.4 litres was seized from the possession of this applicant.

The prosecution case in MCRC No.5911 of 2021 is this, that seizure of 50 numbers of Onerex cough syrup having content of Codeine Phosphate, which is prohibited under NDPS Act, was made by the police. The total volume being 5 litre was seized from the possession of this applicant.

The prosecution case in MCRC No.4975 of 2021 is this, that 34 bottles of Onerex cough syrup having content of Codeine Phosphate, which is prohibited under NDPS Act, was made from the possession of applicant No.1 Akash Kurre. The total volume being 3.4 litres was seized from the possession of this applicant. 11 numbers of Rexogesic injection each containing 2ml and having content of Buprenorphine which is prohibited under NDPS Act, was also seized from him. Similarly on search being made, 28 bottles of Onerex cough syrup of volume 2.8 litres having content of Codeine Phosphate, which is prohibited under NDPS Act was made from the possession of applicant No.2

Akash Tandan.

The prosecution case in MCRC No.5458 of 2021 is this, that 35 bottles of cough syrup of 100 ml each having content of Codeine Phosphate & Chlorpheniramine mabeate which are prohibited under NDPS Act was seized from the applicant by the Police. The total volume being 3.5 litres was seized from the possession of this applicant.

The prosecution case in MCRC No.5446 of 2021 is this, that seizure of 16 pieces capsules of Spas Trancdan Plus having content of tramadol and 9 bottles each of 100ml of Curex cough syrup having content of Codeine Phosphate was made from the possession of this applicant.

The prosecution case in MCRC No.5378 of 2021 is this, that 65 bottles of Onerex cough syrup each of 100ml having content of Codeine Phosphate, which is prohibited under NDPS Act, was made from the possession of this applicant.

The prosecution case in MCRC No.5165 of 2021 is this, that seizure of 19 bottles of Onerex cough syrup having content of Codeine Phosphate and 40ml of Rexogesic injection each having content of 2ml was made from the applicant by the Police. The total volume being 1.9 litres and 40 number of Rexogesic injection each having content of 2ml of buprenorphine, total volume being 80ml were seized from the possession of this applicant.

The prosecution case in MCRC No.5145 of 2021 is this, that 32 numbers of Onerex cough syrup total volume being 3.2 litres having content of Codeine Phosphate which is prohibited under NDPS Act, was seized from the possession of this applicant.

The prosecution case in MCRC No.6341 of 2021 is this, that seizure of 20 numbers of Onerex cough syrup each of 100ml, total volume being 2 litre having content of Codeine Phosphate, which is prohibited under NDPS Act

was made from the possession of this applicant.

The prosecution case in MCRC No.6979 of 2021 is this, that 15 numbers of Buprenorphine injection total volume being 30ml was seized from the possession of this applicant.

The prosecution case in MCRC No.6578 of 2021 is this, that 50 numbers of Rexogesic injection each having content of 2ml of Buprenorphine and total volume being 100ml was seized from the possession of this applicant.

The prosecution case in MCRC No.6603 of 2021 is this, that 95 numbers of Buprenorphine injection each having content of 2ml, the total volume being 190ml and 96 numbers of Pheniramine melete injection were seized from the possession of this applicant.

6. Considered on the submissions.

7. Learned counsel for the applicants have relied on the orders of Delhi High Court in case of **Iqbal Singh Vs. State in bail application No.645/2020**; order of Jammu & Kashmir High Court in case of **Tanvir Ahmed Rath and another Vs. Union Territory of Jammu & Kashmir** ,2020 SC OnLine J&K **559**. In both these cases co-accused persons, who were similarly situated, were granted bail. In case of Mohd. Ahsan (supra), the Single Bench of Delhi High Court held in para-22 as follows:-

“It is apparent from the above that the court was considering a case where illicit substances are sold in mixtures containing neutral substances or substances which may have the effect of enhancing the effect of the offending substance or facilitate its abuse. The court was not concerned with a non-offending substance or preparation with bifacial qualities, which may have miniscule quantities of any offending substance. The litmus test would be as to how the substance is known in common parlance and dealt with by persons in trade. Is it manufactured, distributed, purchased and sold as an illicit substance, which is one of the ingredients of it, or is it known and dealt with as a separate product.”

Delhi High Court has made a reference for decision of questions mentioned

herein above regarding which there is no further information as to whether any Larger Bench has been constituted by the Delhi High Court or not for the decision of the questions mentioned herein above. This order has been passed by making a distinction, that the Supreme Court in the case of Hira Singh (supra) has not made any distinction between manufactured drugs with percentage of mixture of narcotic substance and other mixtures of narcotic drugs or Psychotropic substance out of any drug substance. However, the question raised by the Delhi High Court is unanswered so far. The Supreme Court in the case of **Hira Singh's** (supra) case observed in para-55, 58, 61, 63 & 65 as follows:-

“55. On a bare reading of the Statement of Objects and Reasons, it cannot be said that the intention of the Legislature was to consider the actual content by weight of the offending drug for the purpose of determining whether it would constitute small quantity or commercial quantity. Therefore, we are of the opinion while holding that it is only the actual content by weight of the offending drug to be considered for the purpose of determining whether it would constitute small quantity or commercial quantity, this Court has read more than what was stated in the Statement of Objects and Reasons.

58. In the case of [Directorate of Enforcement vs. Deepak Mahajan and Another](#) reported in (1994) 3 SCC 440, it is observed by this Court that every law is designed to further ends of justice but not to frustrate on the mere technicalities. It is further observed that though the intention of the Court is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. It is the duty of the Court to mould or creatively interpret the legislation by liberally interpreting the statute. In the said decision this Court has also quoted following passage in Maxwell on Interpretation of Statutes, 10th Edition page 229:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

Thereafter, it is further observed that to winch up the legislative intent, it is permissible for courts to take into account the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative

intent devoid of concept of purpose and object will render the legislature inane. It is further observed that in given circumstances, it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile

.61. Even considering the definition of “manufacture”, “manufactured drug” and the “preparation” conjointly, the total weight of such “manufactured drug” or “preparation”, including the neutral material is required to be considered while determining small quantity or commercial quantity. If it is interpreted in such a manner, then and then only, the objects and purpose of [NDPS Act](#) would be achieved. Any other intention to defeat the object and purpose of enactment of [NDPS Act](#) viz. to Act is deterrent.

63. Now, so far as the challenge to the impugned Notification No.2942(E) dated 18.11.2009 issued by the Union of India, by which, “Note 4” has been added to the Notification S.O.1055(E) dated 19.10.2001 specifying small quantity and commercial quantity of the narcotic drugs and psychotropic substance covered under the [NDPS Act](#), 1985 is concerned, as such it can be said to be clarificatory in nature and / or by way of ex abundanti cautela / abundant caution. As observed herein above, while determining the small or commercial quantity in relation to narcotic drugs or psychotropic substances in a mixture with one or more neutral substance(s), it includes the weight of neutral substance (s) also and not only the actual content by weight of the offending drug. Therefore, even if “Note 4” which has been added vide Notification dated 18.11.2009 is not added, in that case also, it makes no difference and / or change. It appears that after the decision of this Court in the case of E. Micheal Raj (Supra) by way of abundant caution, the Union of India has come out with a Notification dated 18.11.2009 adding “Note 4”. Thus, adding “Note 4” by Notification dated 18.11.2009 to the earlier Notification dated 19.10.2001 can be said to be clarificatory and by way of abundant caution only. Even otherwise, for the reasons stated above, the impugned Notification dated 18.11.2009 adding “Note 4” to the earlier Notification dated 19.10.2001, cannot be said to be contrary to the scheme and the various provisions of the [NDPS Act](#).

65. 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.

8. Note No.4 of the Notification specifying small quantity and commercial quantity was brought by amendment dated 18.11.2009. The Supreme Court has very clearly held the validity of this amended note in the case of Hira Singh (supra). The question raised in the cases before this Court is this, that all the articles seized in the name of Psychotropic substance are proprietary medicines manufactured by the licensed pharmaceutical companies. Therefore, the articles seized are in the category of medicines which are not covered under the definition of manufactured drug as defined under Section 2(xi) of the NDPS Act, 1985. It has been clearly held in the case of Hira Singh (supra) that [Entry 239](#) in the Notification specifying small quantity and commercial quantity is exhaustive including any mixture or preparation with or without any neutral material or any of the drugs mentioned in the notification shall be a narcotic drug or Psychotropic substance. Therefore, looking to the quantity of article seized from each of the applicants without there being any prescription of any medical practitioner and without there being any other lawful authority for possession of the medicines in the quantity that have been seized, raises serious question against the applicants, who have been found in possession of such quantities.

Rule 66 of NDPS Rules, 1985 provides as follows:-

66. Possession, etc., of psychotropic substances.—

"(1) No person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these Rules.

(2) Notwithstanding anything contained in sub-rule (1), any research institution or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorised under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person: Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time: 1[Provided further that an individual may possess the quantity of exceeding one hundred dosage units at a time for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner.]

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession."

9. Another ground raised by the applicants is this, that the investigation does not show weight of Psychotropic substance seized from applicants and there is mention of only volume of drugs seized whereas notification specifying small quantity and commercial quantity makes mention only of weight of Psychotropic substance, which may be regarded as commercial quantity or small quantity.

A Co-ordinate Bench of this Court in MCRC No.2235/2020 (Jatin Akash Singh Vs. State of Chhattisgarh) vide order dated 9.6.2020 has held that weight will be equivalent to the volume of mixture containing Psychotropic substance.

10. It has been argued that weight of different liquids vary compared to the volume, Scientifically 1000 ml of water with density at temperature of 4⁰C is equal to 1000 gm. Density of milk, juices, oil and other liquids are different

according to which there may be increase or decrease in weight of 1000ml of each of such liquid. No forensic examination has been done to cover this aspect with respect to density of cough syrups which are in liquid form, therefore, weight of these cough syrups has not been calculated and thus, there is no determination by the investigating agency regarding the weight in grams of all the cough syrups seized in different quantities from different applicants.

11. Although, it is a fact that in none of the cases, that the Investigating Officer has not taken any pains, nor the experts or forensic labs have made any endeavor to make a report regarding exact weight of the contraband seized from each of applicants. Density of any liquid can be calculated in any physical laboratory and exact weight can be determined easily which has not been done apparently. Even in such a case it cannot be said that quantity in volume of Psychotropic substances seized in different cases cannot be categorized as small quantity or commercial quantity. It has been observed in the case of Hira Singh (supra) that statement of objects and reasons and the preamble of the [NDPS Act](#) imply that the Act is required to act as a deterrent and the provisions must be stringent enough to ensure that the same acts as deterrents.

In the cases in hand, there is clear evidence with respect to the volume of liquid seized from each of the applicants, if there had been the scientific report regarding density of mixture containing Psychotropic substances available, the exact weight of the seizure of Psychotropic substance in liquid form could have been determined. In absence of such scientific report the Courts below have drawn conclusion in accordance with the material available in each case. One of the least dense liquid is petrol which is about 30% lighter than water. The cough syrups usually have content of neutral material, sweetener and the powder etc. of medicinal value in soluble conditions.

Similarly, the Psychotropic substance is also one of in soluble content which is present in dissolved condition. Scientifically density of the water which is regarded as standard measure for comparing the volume with weight i.e. 1ml being equal to 1gm, increases on mixing of salt, which further increases on mixing of sugar or other sweeteners, hence, on the basis of this logic it can be observed that density of cough syrups seized in the instant cases are certainly not less than density of water in pure form. Therefore, the view adopted by the coordinate Bench of this Court in Jatin Akash Singh(supra) cannot be regarded as per incuriam as there is possibility that medicines seized in the liquid form may be having more density compared to that of pure water.

12. Hence, in view of the observations made hereinabove, it is held that the relative density of the syrups, which have been seized in the concerned case is definitely more than that of pure water without their being any specific report regarding density of the liquids seized. It can be held that the weight of the cough syrups etc. in the liquid form in volume shall be more than the weight of the pure water of same volume. Hence, on the basis of this logical finding, it is held that in M.Cr.C. No.5502/2021, 6325/2021, 6197/2021, 5969/2021, 5310/2021, 5347/2021, 5911/2021, 4975/2021, 5458/2021, 5378/2021, 5165/2021, 5145/2021, 6341/2021, 6979/2021, 6578/2021, 4648/2021 and 6603/2021, the contraband seized from the respective applicants is in commercial quantity for the reason that the volume of the liquids in each of these cases can be regarded as equivalent weight in grams or even more than that. Therefore, the rigours of Section 37 of N.D.P.S. Act are clearly applicable. There being no reason present to hold that the applicants in these cases have not committed the offences as alleged or that they may not commit similar offences in future. Therefore, I do not feel inclined to grant bail to the applicants in the cases mentioned hereinabove. Hence, the applications mentioned hereinabove are rejected.

13. The case in M.Cr.C. No.6430/2021 is different, no seizure of contraband has been made from the possession of the applicant, he has been made accused on the basis that, he is the owner of the motor cycle which was used by the co-accused from whom the contraband was seized, therefore, under these circumstances, the applicant in this case is entitled for grant of bail.

14. Similarly in the case of M.Cr.C. No.5446/2021, the quantity of the contraband seized from the applicant is less than commercial quantity, however, it is more than small quantity. As the restrictions of Section 37 of N.D.P.S. Act are not applicable to such a case, therefore, I feel inclined to allow this application also. As in the result, the M.Cr.C. No.6430/2021 and 5446/2021 are allowed.

15. Consequently, the application in M.Cr.C. Nos.5502/2021, 6325/2021, 6197/2021, 5969/2021, 5310/2021, 5347/2021, 5911/2021, 4975/2021, 5458/2021, 5378/2021, 5165/2021, 5145/2021, 6341/2021, 6979/2021, 6578/2021, 4648/2021 and 6603/2021 filed by the applicants under Section 439 of the Cr.P.C. for grant of regular bail are hereby rejected. However, the applications in M.Cr.C. Nos.6430/2021 and 5446/2021 filed by the applicants under Section 439 of Cr.P.C. for grant of regular bail are hereby allowed. It is directed that the applicants in M.Cr.C. Nos.6430/2021 and 5446/2021 shall be released on bail on their furnishing a personal bond in the sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned Court, for their appearance as and when directed.

16. Certified copy as per rules.

Sd/-

(Rajendra Chandra Singh Samant)
Judge