

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 6575 of 2020**

- Ajay Kumar Chauhan S/o Ramnagina Chauhan, Aged About 40 Years R/o Plot No. 472, Ward No. 21, Nayapara, Titurdih, Durg, District Durg Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer, P.S. City Kotwali, Raipur, District Raipur Chhattisgarh.

---- Non-Applicant**MCRC No. 6788 of 2020**

- Yogesh Dewangan S/o Girdhar Lal Dewangan, Aged About 30 Years R/o Mainroad Murmuda, P.S. Kumhari, Tahsil And District Durg Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through S.H.O. City Kotwali Raipur Chhattisgarh,

---- Applicant**MCRC No. 7281 of 2020**

- Vishnu Soni S/o Rama Soni Aged About 55 Years R/o Aadarsh Nagar, Near Panchjanya School, Kushalpur, Raipur Distt. - Raipur (Chhattisgarh),

---- Applicant**Versus**

- State Of Chhattisgarh

---- Non-Applicant

For Applicant : Shri B.P. Singh, Shri Shashank Thakur & Shri Devershi
Thakur, Advocates
For Non-Applicant : Shri Ravish Verma, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

27/01/2021 :

1. The aforesaid MCrCs are being disposed of by this common order as they arise out of Crime No.211/2020 registered in Police Station City Kotwali District Raipur for offence under Section 21-C of the NDPS Act.
2. As per the prosecution case, on receiving secret information that the present applicants are possessed of illicit psychotropic substance and are transporting the same in a car bearing registration No.CG-04/MV-7537, a raid was conducted in which 33 cartons of Phensirest cough syrup containing codeine psychotropic substance was recovered. Each carton contained 144 bottles of cough syrup. Each bottle contained 100 ml cough syrup. 7 cartons were recovered from the car in which applicants Yogesh Dewangan, Vishnu Soni and Ajay Kumar Chauhan were travelling whereas 26 cartons were recovered from the house of Vishnu Soni, out of which 11 cartons belong to Vishnu Soni, 11 cartons belong to Ajay Kumar Chauhan and 4 cartons belong to Yogesh Dewangan.
3. Shri B.P. Singh, Shri Shashank Thakur and Shri Devershi Thakur, learned counsel for the respective applicants would refer to the law laid down by the Hon'ble Supreme Court in the matter of **Union of India Vs. Ashok Kumar Sharma and Others** {Criminal Appeal No.200/2020, decided on 28.8.2020} to argue that the cough syrup

belong to Unicare Enterprises, a Pharmacist of Raipur. The said pharmacist who is a drug licensee had purchased from Lakshya Medical, New Delhi-Chhattisgarh Roadlines, therefore, no offence is made out. If at all it is an offence, the same would be covered under the Drugs and Cosmetics Act, 1940 under which offence is cognizable only when a complaint is filed by the Inspector under the Act or any Gazetted Officer empowered by the Central or State Government, or an aggrieved person or a voluntary association. The same having not been done in the present case, no offence is made out either under the Drugs and Cosmetics Act, 1940 or under the NDPS Act.

4. Per contra, learned State Counsel would submit that even if anyone of the accused is an employee of the drug licensee, the fact remains that at the time of transportation of cough syrup containing illicit psychotropic substance, they were not having any licence, therefore, prima facie, they are guilty of committing offence under the NDPS Act. According to him, considering the quantity of contraband, the applicants are not entitled to be released on bail.
5. Having heard learned counsel for the parties and on perusal of case diary, it appears, the applicants were moving in a car while in possession of huge quantity of cough syrup containing codeine psychotropic substance. In a recent judgment in the matter of **Hira Singh and Another Vs. Union of India & Another** {CRA No.722/2017, decided on 22nd April, 2020} {2020 SCC Online SC 382}, the Hon'ble Supreme Court has held that not only the

psychotropic substance but the entire neutral substance would have to be counted for determining the quantity of psychotropic substance. In view of the settled legal position, each applicant being found in possession of more than 1000 ml (which is the commercial quantity) of psychotropic substance in their possession, they are not entitled to be released on bail. It is to be seen that the drug licensee referred by the applicants in their arguments has not claimed for interim custody by moving the application that the psychotropic substance/cough syrup belongs to him. Thus, the psychotropic substances recovered from the applicants are prima facie possessed and owned by them and not by the drug licensee.

6. In the circumstances, the bail applications are liable to be and are hereby rejected.

Sd/-
Judge
(Prashant Kumar Mishra)

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