

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

CRM-M-3416-2021 (O&M)

Date of decision: 08.09.2021

Raj Kumar

....Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Ranjan Lakhanpal, Advocate for the petitioner

Mr. Hittan Nehra, Addl. AG, Punjab

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

This is second petition for grant of bail pending trial in a criminal case arising from FIR No.75 dated 01.07.2020 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Badali Ala Singh, District Fatehgarh Sahib.

On 03.11.2020, the first petition for grant of bail was dismissed by this Court with the following order:-

“Through this petition under Section 439 Cr.P.C., the petitioner prays for grant of regular bail in FIR No.75, dated 1.7.2020, registered under Section 22 of the NDPS Act, 1985, at Police Station Badali, ALA Singh, District Fatehgarh Sahib.

As per the case of the prosecution, the petitioner was apprehended with 1560 Lomotil tablets containing Diphenoxylate Hydrochloride, a prohibited substance. Each tablet weighs around 65 mg. Thus, the total weight comes to 101.4 grams.

The category of commercial quantity starts from more than 50 grams.

Learned counsel, for the petitioner, has submitted that Lomotil is a manufactured drug and therefore, covered by the provisions of Drugs and Cosmetics Act and hence, the prosecution launched under Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDSP Act'), cannot be initiated. He further contended that there was no independent witness and therefore, the case of the prosecution cannot be believed.

On the other hand, Ms. Samina Dhir, DAG, Punjab, has pointed out that the issue with regard to the question as to whether the manufactured drug falls within the scope of NDPS Act or not, has now been settled by a Larger Bench of the Supreme Court, in the **State of Punjab vs. Rakesh Kumar** 2019(1) RCR (Crl) 218. She submitted that while overruling the judgment passed by this High Court, the Supreme Court has held that both the Acts i.e the NDPS Act and the Drugs and Cosmetics Act, are having different objects and therefore, in view of the explicit prohibition as provided under Section 8 (c) of NDPS Act, possession of any Narcotic Drugs or Psychotropic substance is prohibited. She further relies upon another three Judge Bench Judgment, in the **State of Maharashtra vs. Sanjeev B Deshpandey** (2014)13 SCC 1.

This Court has considered the submission of the learned counsel for the parties and perused the paper book. On careful analysis of the

submission of the learned counsels, it becomes clear that Section 8(c) of the NDPS Act, has been interpreted vis-à-vis Drugs and Cosmetics Act, by the Supreme Court, in many judgments. The recovery from the petitioner falls in the category of commercial quantity because the entire mixture or weight is to be seen including one or more neutral substances, as laid down in Hira Singh and another vs. UOI and another (Crl.Appeal No. 722 of 2017), decided on 22.4.2020.

Still further, learned counsel for the petitioner fails to make out a case for bail within the parameters as laid down by Section 37 of NDPS Act.

Therefore, this Court does not find it appropriate to accede to the request made in the petition. Hence, dismissed.”

Learned counsel representing the petitioner contends that the petitioner continues to be in custody. In the present case, the alleged recovery from the petitioner falls in commercial category. In view of the provisions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, bail cannot be granted only on the basis of period of custody.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

08.09.2021

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE