

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANIDGARH.

CRM-M-47523-2021

Date of Decision:-29.11.2021

Anu.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present:- Mr. Ajay Kumar Dahiya, Advocate for the Petitioner.

Mr. P.P. Chahar, DAG Haryana.

SURESHWAR THAKUR, J.(ORAL)

The pure content of haul of the prohibited salt, as carried in the psychotropic substance(s), as allegedly recovered from the purported conscious, and, exclusive possession of the bail applicant/accused, became solitariness considered by the learned Magistrate concerned, in his order made on 10.05.2021, to hence, thereafter record a finding that the entire cache, hence falling within less than commercial quantity thereof, and, hence proceeded to admit the bail applicant to bail.

The State of Haryana became aggrieved from the afore order, and, preferred a revision against it, before the learned Additional Sessions Judge, Panipat, and the latter after bearing in mind the verdict made, by the Hon'ble Apex Court in Hira Singh Vs. Union of India 2020(2) RCR (Criminal) 523, wherein a proposition of law occurs, that the weight of the

entire mixture or the entire weight of the narcotic drug, is to be taken into account, rather than taking into account only pure contents thereof, hence to determine the apposite weight of the seized, hence made a conclusion that the learned Judicial Magistrate concerned had transgressed the afore-mandate, inasmuch as, his untenably taking into account only the pure contents, of the total haul, of the seized psychotropic substance concerned. Therefore, the learned Additional Sessions Judge, Panipat, found that the learned Judicial Magistrate concerned, has erred in granting bail to the accused concerned, and consequently, through his making an order on 28.08.2021, upon, Criminal Revision No.28/2020, he set aside the order made, on 10.05.2021, by learned Magistrate concerned, . The bail petitioner is aggrieved, from the aforemade order, and challenges the same, upon the fact, that the apposite inventory as became prepared through an order made on 1.9.2021, by the learned Judicial Magistrate, Panipat, the relevant portion whereof is extracted hereafter, includes both the weight of bottles, and, that of the vials, appertaining to the relevant seizure. Therefore, he argues that the addings in the relevant inventory, the weight also of bottles, and, of the vials, has led to a miscomputation of the apposite weight of the seizure:-

“ *The inventory of the case property is prepared as below:-*

INVENTORY:-

1. *4 bottles of Biorex 100 ml each. Weighed in Court found weighing 546 Grams, two samples of bottles taken and weighed found 272 Gram.*
2. *4 bottles of Codistar 100ml each weighed in Court. Found weighing 592 Gram. Two bottles taken as ample found weighing 296 Gram. Residue weighed found 296 Gram.*

3. *420 tablets of Lomotil weighed in Court. Found weighing 46 Gram. One strip containing 60 tablets taken as sample weighed having 6 Gram. Remaining residue weighed found 40 Gram.*
4. *76 vials of Panlab weighed in Court. Weighed and found 193 Gram. 5 Vials taken as sample weighing 12 Gram. Residue weighed found weighing 180 gram.*
5. *158 vials of Hacket weighed in Court. Weighed and found 379 Gram. 5 vials taken as sample weighing 12 gram. Residue weighed found weighing 368 Gram.*
6. *25 vials of Dolopent weighed in court. Weighed and found 65 Gram. 5 Vials taken as sample weighing 12 gram. Residue weighed found weighing 52 Gram.*

Consequently, he argues that after excluding the weight of the bottles concerned, and, also the weight of the vials, thereupon the relevant haul would come within small quantity, therefore he argues that thereupon the rigor of Section 37 of NDPS Act, would be inapplicable, and, obviously, hence the bail applicant would be entitled to become admitted to bail.

Though the merit of the afore submissions cannot be assessed at this stage. If the afore submission is creditworthy it requires its being tested through the making of an appropriate direction. Therefore, a direction is made upon the SHO concerned, of the police station concerned, to make a further direction, upon, the incharge of the malkhana concerned, to within one week, produce the bottles concerned, before the learned Magistrate concerned. The Magistrate concerned shall after taking into account the weight of the liquid, as mentioned in the labels attached to the apposite bottle(s), shall thereafter, on electronic weighing scales, weigh the bottles

concerned, and, shall accordingly separately compute the weight of the liquid inside, the bottles concerned, and, also of the apposite bottles. The SHO of the police station concerned, shall also ensure by making a direction, upon, the malkhana incharge, hence ensure the retrieval from the malkhana concerned, also of the seized vials, and, shall thereafter, produce them also before the learned Magistrate concerned, and, the latter shall in an alike manner (supra) make the relevant computation. The apposite report thereafter be communicated to the accused. In case the result leads towards a conclusion, that hence the weight of the total haul falls within small quantity or intermediate quantity, thereupon, he may in accordance with law recourse the appropriate remedy. Obviously, hence the impugned order remains undisturbed.

Disposed of.

(SURESHWAR THAKUR)
JUDGE

November 29, 2021

Vinay

Whether speaking/reasoned : Yes
Whether Reportable : Yes