



S. No.106

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.3650 of 2018 (O&M)

Date of Decision:19.02.2026

Ajay Kumar and another

.....Petitioners

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. Jaivir Yadav, Sr. Advocate with
Mr. Tapan Kumar, Advocate for the
petitioners.

Mr. Ishan Kaushal, AAG, Punjab.

Yashvir Singh Rathor, J. (Oral)

1. |The present revision petition has been instituted against the order dated 07.07.2018 vide which the application moved by the petitioners for discharge has been dismissed and they have been charged for the offence under Section 21 read with Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (**hereinafter referred to as “the NDPS Act”**) by Additional Sessions Judge, Amritsar.

2. As per allegations in the FIR, on 11.01.2017, Inspector Palwinder Singh along with police officials was present at Bus Stand Batala Road when he received secret information that one Balwant Singh owns a house in Parkash Vihar which has been given on rent to Sanjay Kumar and Ajay Kumar- petitioners who are residents of Shastri Nagar, Lawrence Road. Both of them own one shop in the name of “SA Medicine Centre” at Farid Chowk and they have kept huge quantity

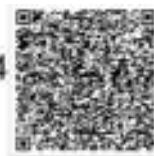


of intoxicating medicines in the said house taken on rent. In case, a raid is conducted, huge quantity of contraband can be recovered. Thereafter, a raid was conducted in the said house where two clean shaven persons were found present and one of them escaped on seeing the police party while one person namely Sunil Sharma was apprehended. He told the name of the other person who had absconded as Ajay Kumar (petitioner). Many boxes were found lying and on checking, two lakh tablets of different pharma companies in the name of Kamini Vidrawan Ras were recovered which were sealed and taken into possession after drawing the samples. Accused Ajay Kumar and Sanjay Kumar were arrested and after completion of investigation, final report was presented in the Court for trial.

3. The copy of supplementary challan was supplied to the accused and after hearing the Public Prosecutor and the accused, both the accused were charged for the offence under Section 21 read with Section 29 of the NDPS Act vide order dated 07.07.2018 passed by learned Additional Sessions Judge, Amritsar and their application for discharge was dismissed.

4. Feeling aggrieved, revision in hand has been instituted and learned counsel for the petitioners as well as learned State Counsel have been heard.

5. Learned counsel for the petitioners argued that the petitioners are registered Vaid in Ayurvedic medicines. The ayurvedic medicines recovered fall under the category of medicinal opium and no offence under Section 21 of NDPS Act is made out as only traces of morphine have been found in the contraband as per FSL report whereas morphine more than .2% should have been found so as to bring the same within the four corners of "opium derivatives" as defined under Section 2(xvi) of the NDPS Act, 1985. As such, only traces of morphine have



been found and they could have been prosecuted only if the percentage of morphine would have been .2% or more and no offence under Section 21 read with Section 29 of the NDPS Act is attracted and they are liable to be discharged. In support of his contention, learned counsel has cited judgment dated 11.03.2015 rendered by a co-ordinate Bench of this Court in CRR No.373 of 2015 titled **Vinay Kumar and another Vs. State of Punjab.**

6. On the other hand, learned State Counsel has argued that from the material placed on file, prima-facie offence under Section 21 read with Section 29 of the NDPS Act is made out. At the stage of framing of charge, the trial Court is required to see whether a prima-facie case is made out or not and the material on file is not to be meticulously examined to form an opinion while framing the charge. Learned State Counsel further contended that the impugned order is well-reasoned and does not call for any interference and he prayed that the petition in hand be dismissed.

7. Before proceeding further, Section 2(xv), 2(xvi), 18 and 21 of the NDPS Act are being reproduced hereinafter for ready reference:-

“Section 2 (xv) "opium" means-

- (a) the coagulated juice of the opium poppy, and
- (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent. of morphine:

2(xvi) "opium derivative" means-

- (a) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Cen-



tral Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

(b) prepared opium, that is, any product of opium by any series of operations designed to transform opium into an extract suitable for smoking and the dross other residue remaining after opium is smoked;

(c) phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts:

(d) diacetylmorphine, that is, the alkaloid also known as diacetylmorphine or heroin and its salts; and

(e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine;

xxxxx”

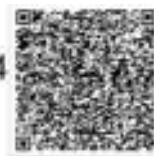
Section 18. Punishment for contravention in relation to opium poppy and opium.-Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.

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Section 21. Punishment for contravention in relation to manufactured drugs and preparations.- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,-

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;
- (b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

8. Besides this, relevant portion of FSL report is also reproduced as under:-

“The contents of the parcels marked 1 to 24 under reference have been analysed separately by chemical analysis. On the basis of analysis morphine has been found present in traces in contents of all the parcels (1 to 24).”

9. A perusal of the afore-said report of the FSL makes it clear that traces of morphine have been found in all the 24 samples sent to FSL. As such, the morphine content detected in recovered contraband is less than the stipulated quantity of .2% and the medicines recovered from the petitioner thus cannot be termed as ‘opium’ or ‘opium derivative’ and in these circumstances, the charge against the petitioners in respect of illegal possession of opium is not sustainable.

In **Vinay Kumar’s case (supra)** also, the contents of morphine were found to be



less than .2% and the proceedings were quashed which is fully applicable to the facts of the case in hand.

10. As a result of afore-said discussion, I am of the considered opinion that the learned trial Court has not appreciated the facts of the case and the material on file in the correct perspective while framing charge against the accused and the impugned order suffers from material illegality and irregularity and same is not sustainable. Accordingly, petition in hand is accepted and order dated 07.07.2018 is set aside and both the accused are ordered to be discharged.

(Yashvir Singh Rathor)
Judge

February 19, 2026
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No