

Kailash Gupta vs.state

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Court : Delhi

Decided On : Jan-11-2019

Appellant : Kailash Gupta

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Order: January 11, 2019 + BAIL APPLN. 2593/2018 KAILASH GUPTAPetitioner Through: Mr. Sudarshan Rajan, Advocate Versus Through: Mr. M.P.Singh, Advocate STATE CORAM: HON'BLE MR. JUSTICE SUNIL GAURRespondent

ORDER

... Petitioner

seeks bail in FIR No.198/17, under Sections 21/ of The Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth referred to as the NDPS Act) and Sections IPC, registered at P.S. Crime Branch (SED) on the ground that 10,600 bottles of Phensydyl syrup were recovered from petitioner.

... Petitioner

s counsel submits that petitioner is an authorized licensee who had sold the Phensydyl syrup to various parties. It is submitted that the recovered drug does not come within the ambit of NDPS Act. To submit so, attention of this Court is

drawn to notification of 14th November, 1985 (Annexure P-17) to point out that recovered Phensydl syrup contains less than 2.5 percent of Codeine. It is further submitted that case set up against petitioner comes within the provisions of The Drugs and Cosmetics Act, 1940. Attention of this Court is also drawn to Section 18 (b) to 27 (d) of The Drugs and Cosmetics Act, 1940. BAIL APPLN. 2593/2018 Page 1 of 3 On the contrary, learned Additional Public Prosecutor draws the attention of this Court to the status report to submit that the transportation of the bulk Phensydl syrup attracts the provision of NDPS Act and relies upon the decision in State of Punjab vs. Rakesh Kumar 2012 SCC OnLine SC2651 and Mohd. Shahabuddin and Anr. (2012) 13 SCC491 to submit that the transportation of the Phensydl syrup was not for any medicinal and scientific purpose. In rebuttal, it is submitted that the decision in State of Punjab vs. Rakesh Kumar and Mohd. Shahbuddipn & Anr. (Supra) do not apply to the facts of the instant case as the said decisions do not deal with authorized licensee. It is submitted that petitioner is in custody since 30th November, 2017 and the trial is likely to take time as prosecution intends to get 56 witnesses examined. So, it is submitted that it is a fit case for grant of bail to petitioner. Attention of this Court is drawn to Rule 52 F of the NDPS Rule 1985 to point out that the case of petitioner, is covered by the said rule which deals with the sale of narcotic drugs by manufacturer or licensed dealer. Thus, it is submitted that it is not a fit case for grant of bail. Upon hearing and on perusal of the status report and the decisions cited, I find that the applicability of provision of NDPS Act or The Drugs and Cosmetics Act, 1940 cannot be pre-judged at the bail stage. The decisions relied upon do not deal with an authorized licensee and so, bail cannot be denied to petitioner, while relying upon these decisions. Supreme Court in Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Anr. (2005) 5 SCC294 has reiterated that for the BAIL APPLN. 2593/2018 Page 2 of 3 purpose of considering application for bail, the Court is not to weigh the evidence meticulously but has to arrive at a prima facie finding on broad probabilities. The observations made by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without being prejudiced in any manner. Since no recovery has been affected from petitioner, therefore, the

bar of Section 37 of the NDPS Act prima facie, will not apply. Considering the fact that petitioner is an authorized licensee and is in custody since 30th November, 2017 and that petitioner has no previous involvement to his credit and because the trial of this case is likely to take time, it is deemed appropriate to release petitioner on bail. In view of the aforesaid, without commenting on the merits of the case, it is directed that petitioner be released on bail subject to his furnishing bail bond in the sum of 1,00,000/- with one surety of the like amount to the satisfaction of the trial court. The petitioner shall not leave the country without permission of the trial court and shall surrender his passport, if any, with the trial court. It is made clear that in case petitioner in any way protracts the trial or tempers with the evidence, then respondent-State shall be at liberty to get the bail of petitioner cancelled. The application is accordingly disposed of. Dasti. JANUARY11 2019 v BAIL APPLN. 2593/2018 (SUNIL GAUR) JUDGE Page 3 of 3

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