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Court : Madhya Pradesh

Decided On : Apr-12-2007

Reported in : 2007(3)MPHT21

Judge : S.C. Vyas, J.

Appellant : Vishnu

Respondent : State of M.P.

Disposition : Application dismissed

Judgement :

ORDER

S.C. Vyas, J.

1. Both parties heard.
2. This is second application filed under Section 439, Cr.PC for grant of bail in connection with Crime No. 91/06, registered under Section 8 read with Section 21 of the NDPS Act by Police Bhavgarh, Mandsaur, on the allegation that present applicant was found in possession of 720 gms of heroine.
3. Earlier application of present applicant was dismissed as not pressed.

4. Learned Counsel for the applicant submitted that as per the report of Forensic Science Laboratory, dated 17-7-06 the percentage of Diacetylmorphine in the alleged contraband powder was 18.45% and on the basis of arithmetic calculation as per its percentage, total quantity of heroine in the alleged contraband comes out to be 132.84 gms., which is below than the prescribed commercial quantity and therefore the applicant is entitled to be released on bail.

5. This Court is not impressed by the arguments advanced by learned Counsel for the applicant. The definition of manufactured drugs comes under Section 2(xi) of the NDPS Act. This definition prescribes that 'manufactured drugs' means (a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate; (b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug.

6. But does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug.

7. As this definition nowhere provides percentage of Diacetylmorphine in the alleged contraband. What is necessary is only this that it should contain narcotics substance or a preparation of that and as per the first part of definition all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate has been defined as manufactured drugs.

8. 'Opium derivative' is defined under Section 2(xvi) of the Act as (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 Central 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 or 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 diamorphine or heroin and its salts; and (e) all preparations containing more than 0.2 per cent of morphine or containing any Diacetylmorphine.

9. This definition clearly shows that if any preparation contains Diacetylmorphine and known as heroine or its salts, then it itself can be said to be opium derivative and comes under the definition of manufactured drugs and its preparation other all preparation, which contents more than 0.2% morphine also comes under the same category, including preparations containing any Diacetylmorphine, which means that the percentage of 0.2% morphine is prescribed for any other preparation then Diacetylmorphine. As and when any preparation is found containing Diacetylmorphine then it can very well be said to be opium derivative and comes under the definition of manufactured drug and if its weight is more than prescribed commercial quantity then it can be treated so, for the purpose of the provisions of Section 37 of the Act.

10. In the fact of present case, the product heroine which was ultimately found Diacetylmorphine was found in possession of the present applicant and its weight was 720 gms. It is clear that it was more than prescribed commercial quantity and therefore looking to the provisions of Section 37 of the Act, present applicant is not entitled to be released on bail, because sufficient material is available on record to show that he was having conscious possession over this contraband article.

11. Resultantly this application fails and is dismissed.