

**Heera Lal Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/684617](http://sooperkanoon.com/684617)

**Court :** Delhi

**Decided On :** Jan-06-2003

**Reported in :** 2003CriLJ3819; 104(2003)DLT224; 2003(68)DRJ122

**Judge :** R.C. Chopra, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985, 1985](#) - Sections 21, 61 and 85

**Appeal No. :** Cri.M.(M) No. 4144/2002

**Appellant :** Heera Lal

**Respondent :** State

**Advocate for Def. :** Pawan Sharma, Adv.

**Advocate for Pet/Ap. :** Sanjiv Kumar, Adv

**Disposition :** Application dismissed

**Judgement :**

**R.C. Chopra, J.**

1. The petitioner stands arrested in case FIR 50/2002 registered at PS Narcotics Branch, Kamla Market under Section 21/61/85 of the NDPS Act, 1985 (hereinafter referred to as the Act only) on the allegations that on 10.8.2002 200 gms. of

smack was recovered from him.

2. Learned counsel for the petitioner has prayed for bail mainly on the ground that the quantity allegedly recovered from the petitioner was not commercial quantity. It is also argued that the FSL report in the present case does not give the percentage of diacetylmorphine and as such it cannot be said as to what was the actual quantity of the contraband recovered from him. In support of his contention he relies upon a judgment of this Court in *Mohd. Sayed v. Customs* reported in 2002 (2) JCC 1293. Learned counsel for the respondent has opposed the petitioner's application for bail on the ground that although the contraband recovered from the petitioner was less than commercial quantity yet it was substantial quantity as it was 200 gms and in view of the serious punishment provided for the offence, there is every likelihood that in case the petitioner is released on bail he may abscond to avoid punishment. Learned counsel for the respondent has argued that the judgment relied upon by learned counsel for the petitioner is not applicable to the facts of the present case.

3. After considering the submissions made by learned counsel for the petitioner and learned counsel for the respondent this Court is of the considered view that although the quantity of smack recovered from the petitioner was not commercial quantity but still the offence remains grave and heinous as the petitioner appears to be a seller of narcotics. In case the petitioner is found guilty he may be liable to receive severe punishment. Possibility cannot be ruled out that in case the petitioner is enlarged on bail, he may abscond with a view to avoid punishment. The evidence is still to be recorded by the Trial Court and only after recording the prosecution evidence it would be possible for the Court to form an opinion as to whether there is any doubt or not regarding allegations against the petitioner. The plea that FSL report does not disclose the percentage of diacetylmorphine is also without any substance in as much as the report clearly shows that the contraband recovered from the petitioner showed positive regarding the presence of diacetylmorphine. In the case of *Mohd. Sayed v. Custom* (supra) the facts and circumstances were entirely different as the accused was found in possession of 3215 Injections of Buprenorphine of 2 ml each and the CRCL report revealed that there was 0.09 ml Buprenorphine per ml in each injection. The Court was,

therefore, of the view that the quantity of Buprenorphine as mentioned in the charge was not correctly calculated and accordingly ordered re-framing of the charge. The present case is however on altogether different facts.

4. Considering the serious nature of the offence and the gravity of the allegations, this Court is of the considered view that at this stage there are no good grounds for enlargement of the petitioner on bail. The application therefore stands dismissed.

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