

Satish Kumar Vs. State

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Court : Delhi

Decided On : Feb-14-1989

Reported in : ILR1989Delhi413

Judge : P.K. Bahri, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 2

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 178 of 1989

Appellant : Satish Kumar

Respondent : State

Advocate for Pet/Ap. : U.K. Shandilya,; Rajesh Kumar and; Meera Bhatia, Advs

Judgement :

P.K. Bahri, J.

(1) One kilogram of opium is stated to have been recovered from the petitioner. The petitioner has sought bail alleging that he has been falsely implicated in this case. It is not possible to hold that the petitioner has been falsely implicated in this case in absence of any satisfactory material brought on record. Counsel for the petitioner has argued that no evidence has been collected by the prosecution to show that the contents of the goods recovered from the petitioner are opium as defined in the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter

referred to as 'NDPS Act'). I have seen the copy of the C.F.S.L. report placed before me by the learned counsel for the petitioner which shows that the sample of the contents seized from the petitioner was examined and the expert opined that the sample gave positive test for opium and the percentage of morphine found in the sample is 2.4% approximately. Counsel for the petitioner has made reference to *Sushil Kumar v. State of Haryana* 1984 PLR 420(1), a Division Bench Judgment, *Amta Singh v. State of Punjab* 1987(1) C.L.R. 533(2), *Boota Singh v. State of Punjab*, (3) and *Samsher Singh v. State of Punjab* 1987(1) RC.R. 53(4), extracts of which have been enumerated in the bail petition itself, where the view has been taken that unless and until the report of the expert shows that the contents examined by the expert contain any of the ingredients mentioned in the definition of 'opium' the sample cannot be treated as 'opium' for the purposes of the Ndps Act. It was mentioned that the mere fact that some percentage of morphine is detected in the sample would not make the product as opium. 'Opium' has been defined in clause (xv) in Section 2 of the Ndps Act to mean as follows:

'(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) The word 'morphine' has been defined in Webster's Third New International Dictionary to mean 'as the principal alkaloid of opium occurring in amounts up to 15 per cent'. 'Opium' as defined in Black's Medical Dictionary lays down that 'the action of opium depends upon the alkaloids it contains, of which no fewer than 18 are available from different kinds. Of these, the chief 'are morphine, codeine etc.' So, morphine is the main and principle alkaloid of opium and if morphine is found in the product above 0.2% the product has to be treated as 'opium'. It is not possible to agree with the view expressed by the other High Courts on this point. Counsel for the petitioner has made reference to -an order made by H. C. Goel, J. in Criminal Miscellaneous (Main) No. 910/88, *Ashwani Kumar v. State*, decided on August 16, 1968(5). I have gone through the order and find that no opinion has been expressed on this point by the learned Judge and only different contentions made by counsel for the petitioner have been noticed including the judgments of Gujarat and Punjab High Courts and then it was found that the case was fit for

grant of bail. So, no ratio of law has been laid down in this judgment which could be considered applicable to the facts of the present case. I am of the prima facie view that once the C.F.S.L. certificate is given showing the presence of percentage of morphine above 0.2% the contents of the sample have to be treated as 'opium'.

(3) Then, the learned counsel for the petitioner has argued that the petitioner has enjoyed the benefit of interim bail and had not misused the same and the petitioner is not a previous convict and there is no likelihood that the petitioner while on bail would not appear in court or would tamper with evidence, Hence, the petitioner should be granted bail and in the petition extracts of judgments given by the Supreme Court on the question of bail have been reproduced which I need not refer because they are well known but it is to be mentioned here that the offences under the Ndps Act are very serious and grave and the people indulging in such offences are really causing havoc to the health of the inhabitants of this world. The Legislature has thought fit to prescribe very deterrent punishment for such offences. The offences which have such deleterious effect on the health of the people are always to be dealt with a heavy hand and a person found committing such offences normally does not deserve to be released on bail. In the present case, the learned counsel for the petitioner has argued that one kilogram of opium is not a very big quantity and thus, the petitioner should be allowed bail. I do not think that one kilogram of opium is a small quantity. It may be that the Punjab High Court in the judgments mentioned in the bail petition thought such quantity to be not very big one but it is not possible to agree with such views because even a small quantity of the drugs coming into the scheme of the Ndps Act are vested with the same type of punishments. I do not think it is a fit case for grant of bail. The mere fact that the petitioner has been granted interim bail does not mean that he is entitled to have regular bail on merits on the ground that he had surrendered to the court after enjoying the interim bail. The petition is dismissed.