

**Mangna Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/705734](http://sooperkanoon.com/705734)

**Court :** Delhi

**Decided On :** Nov-03-2003

**Reported in :** 2004(72)DRJ469

**Judge :** S.K. Agarwal, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 21, 37, 61 and 85; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

**Appeal No. :** CrI. M. (M) No. 3443/2003

**Appellant :** Mangna

**Respondent :** State

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

**Advocate for Pet/Ap. :** Raman Sahney, Adv

**Judgement :**

**S.K. Agarwal, J.**

1. By this petition under Section 439, Cr.P.C. read with Section 37 [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short 'NDPS Act') petitioner is seeking bail in case FIR No. 831/99, under Sections 21/61/85 NDPS Act, P.S. Mangolpuri. Petitioner's first application for bail was dismissed by Hon'ble Mr. Justice J.D.

Kapoor vide order dated 13.11.2002 passed in Cri. M. (M) No. 3691/2002.

2. Prosecution allegations in brief are that on 16.9.1999 at about 1.55 p.m., petitioner was apprehended near Jhuggi Camp, Beniwal, Nagar, Parwana Road, Pitampura, Delhi and 700 gms of smack was recovered from her possession. The same was seized and sealed; samples were drawn in accordance with law. In the course of investigation, the sample was sent for analysis to the Forensic Science Laboratory, Government of NCT of Delhi (for short 'FSL'), which after Chemical analysis, vide its report dated 13.9.1999 opined that no diacetylmorphine or other opium derivatives, were found in the sample. Relevant portion of the report reads as under:-

'General and specific Chemical tests for exhibit 'A' responded negative for diacetylmorphine and other opium derivatives.'

3. On 5.12.1999, two new samples were taken out by Head Constable from the case property lying in the 'Malkhana' (store). One was sent to CFSL at Hyderabad, A.P. which analysed the sample and opined as under:-

'The exhibit-1 was analysed for colour test, Thin Layer Chromatography High Performance Thin Layer Chromatography Infrared Spectroscopy, Gas Liquid Mass Spectrometry.

Based on the above tests, the results obtained in respect of the exhibit-1 are given below.

Monoacetyl morphine, caffeine and Acetaminophen (Paracetamol) were detected in Exhibit-1.

References:-

1. United Nation recommended methods for testing.
2. Isolation and Identification of Drugs Clarke's.
3. J. of Forensic Sciences.'

4. Learned counsellor petitioner submits that Monoacetyl morphine, Caffeine and Acetaminophen (Paracetamol) are not Narcotic Drugs and Psychotropic Substance, as defined in the Act. Learned Addl. Public Prosecutor for State does not contest the same. Thus, on this report also, prosecution against petitioner is not sustainable. The other sample taken on 5.12.1999 was also sent to CFSL at Chandigarh (U.T.) which gave the report that the sample was having a diacetylmorphine (heroin), but it was found having 0.8% purity only. The relevant portion of the report reads as under:-

'chromatography - Mass Spectrometric analysis were carried out with exhibit X-1 under reference for the detection of diacetylmorphine (heroin) in it. The results thus obtained have been analysed as given below:-

i. Diacetylmorphine (heroin) has been detected in exhibit X-1.

ii. The percentage of a diacetylmorphine (heroin) was found to be 0.8 in exhibit X-1'.

5. On the basis of above report, prosecution is now basing its case. Learned counsel for petitioner argued that petitioner was arrested on 16.9.1999 on the basis of the sample taken at spot prosecution could not be sustained. Two other samples of 50 grams each were allegedly drawn from case property in the Malkhana on 5.12.1999, were in violation of various safeguards provided under the law; that petitioner has already suffered an imprisonment of about four years; and the purity being only 0.8% of diacetylmorphine (heroin) in Ex. C-1, the actual quantity of the Psychotropic Substances allegedly found in possession of petitioner would be less than the small quantity. In support of his submission reference was also made to the decision of this Court in Mohd. Sayed v. Customs, : 99(2002)DLT305 . Learned APP for State argued to the contrary.

6. I have considered the rival contentions. Narcotic drug is defined in Section 2(xiv) of the Act to mean 'coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured goods'. Each of these items are also specifically defined in the different clauses of the Section. 'Psychotropic substance' is defined in Section 2(xxiii) to mean any substance, natural or synthetic, or any natural

material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule'. A perusal of the Schedule reveals that psychotropic substances have general as well as Chemical names. therefore, the question whether a narcotic drug or psychotropic substance is a small quantity or not, on the basis of percentage purity, would depend upon facts of each case, particularly, the nature of the article recovered and the test(s) etc. carried out. However, it is not necessary to decide this issue here, as in this case the first two reports, from Delhi and Hyderabad respectively, referred to above, do not support the prosecution case. Furthermore, petitioner is a lady; she was granted interim bail earlier and there is nothing to show that she committed any offence while on interim bail. Thus, the requisites for grant of bail, as envisaged by Section 37 of the Act, are fully satisfied.

7. For the foregoing reasons, petitioner is ordered to be released on bail, on her furnishing a personal bond in the sum of Rs. 30,000/- with one surety in the like amount to the satisfaction of the trial court, subject to the condition that petitioner shall not, in any way, tamper with the evidence.

8. Petition stands disposed of. Any observation made herein would not affect the merits of the case during trial. dusty.