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Court : Punjab and Haryana

Decided On : May-10-2012

Judge : Ranjit Singh

Appeal No. : CRL. MISC. NO. M-10949 OF 2012 (O&M)

Appellant : Jatinder Kumar @ Vicky

Respondent : State of Punjab

Judgement :

Ranjit Singh, J.

The petitioner prays for grant of bail in case FIR No.112 dated 09.12.2011 registered under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Mehtiana (PP Kot Fatuhi) Distt. Hoshiarpur.

As per the allegations, contained in the FIR, 54 bottles of Rexcof Syrup, 30 tables of Nitmed and 50 packets (100 tablets each) of momolit were recovered from the petitioner. The report of Forensic Laboratory is available with the State counsel.

Learned counsel for the petitioner has raised two fold arguments before me. He would first submit that Rexcof syrup is not covered by schedule-I and also does not contain the salt, if any, mentioned in the said schedule. According to him same is the position in regard to tablet Nitmed. As regard momolit tablets, the counsel submits that the salt contained in this tablet is mentioned in schedule-I. But if this

is calculated as per the finding of FSL then it will only show a recovery of non-commercial quantity.

The State counsel has joined serious issue in this regard with the counsel for the petitioner. The state counsel has placed before me a report given by FSL and as per this report, the ingredients present in momolid is covered by Diphenoxylate hydrochloride. State counsel will co-relate entry No.44 in the schedule 1 to this salt. Similarly, according to the State counsel, Nitmed is covered by Nitrazepam and is found to have contained salt. State counsel will co-relate entry No.221 in the schedule 1 to this salt. The FSL report, thus, indicates so.

Similar issue in regard to Hydrochloride was considered by this Court while deciding Criminal Misc.No.960 of 2012 wherein it is held as under:-

“The petitioner has repeated the prayer for grant of bail now on the ground that the powder recovered is opined to be Diphenoxylate Hydrochloride and this is not mentioned in the Schedule II of the NDPS Act to be the substance, which will attract the provisions of NDPS Act. Accordingly, counsel contends that the offence under the NDPS Act is not made out in this case and at the most the petitioner can be accused of offence under the Drugs and Cosmetics Act. State counsel, however, would dispute these contentions and has invited my attention to Entry No. 58 of the Notification S.O. 826 (E) dated 14.11.1995, which is as under:-

“(58) Ethyl 1-(3-Cyano-3, 3-diphenylpropyl) -4- phenylpiperidine-4- carboxylic acid ethyl ester (the international non-proprietary name of which is Diphenoxylate), and its salts, preparations, admixtures, extracts and other substances containing any of these drugs, except preparations of diphenoxylate containing, per dosage unit, not more than 2.5 mg of diphenoxylate calculated as base, and a quantity of atrophine sulphate equivalent to at least one per cent of the dose of diphenoxylate.”

From this, the counsel would contend that even if the powder recovered is not a schedule drug to attract offence under Section 22 of the NDPS Act still it will be an offence under Section 21 of the NDPS Act. State counsel, accordingly, would urge that the petitioner cannot escape the liability under the NDPS Act. Section 21 of

the NDPS Act provides that whosoever in contravention of any provision of this Act or any rule or order or a condition of licence granted thereunder manufacturers, possesses, sells, purchases, transports, imports inter-State, exports inter-state or uses any manufactured drug or any preparation containing any manufactured drug shall be punished under the Section. Accordingly, manufacturing, possessing, selling, purchasing, transporting, importing or exporting interstate or using or manufacturing of manufactured drug is made liable under this section. Prima facie, State counsel arrears to be justified in submitting that the provisions of NDPS Act would be attracted in this case in either form and the petitioner cannot say that he cannot be made answerable for an offence under the NDPS Act. I may hasten to add that, this is only a prima facie view formed on the basis of submission made and the trial Court would ultimately go into it in detail on the basis of evidence and material pleaded before it.”

The submission made by the learned counsel for the petitioner that the quantity is to be seen and appreciated in the light of the percentage of salt noticed in each of the item recovered would not impress me. In this regard, reference can be made in Harpal Singh's case (supra) where arguments on this line have already been repelled.

It may need a notice that the counsel for the petitioner conceded before me that the petitioner is not a licence holder. Then what for he was carrying all these medicines really cannot be explained. Certainly, he cannot say that he was carrying all this quantity for consumption. Obviously, it was for sale and distribution as intoxicant. The petitioner would not deserve the concession of bail.

Dismissed.

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