

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

CRR No.532/2015

Basantilal S/o Banshilal

Vs.

State of MP

Shri Vikas Jain, learned counsel for the applicant.
Shri Romesh Dave, learned counsel for the respondent/State.

ORDER

(Passed on this 9th day of October, 2015)

This Criminal Revision under section 397 read with section 401 of Cr.P.C. is directed against the order passed by learned Special Judge under NDPS Act, Neemuch in Special Sessions Trial No.24/2013 dated 04.04.2015 by which learned Special Judge framed charge under section 8/18 (b) of the NDPS Act and refused the prayer made by counsel to frame charge under section 8/21 of the NDPS Act.

The facts giving rise to this revision are that present applicant is facing trial before the Special Judge, Neemuch, for keeping in his possession 4 kg of the contraband Opium. The sample of the seized contraband was sent for chemical analysis

to the Regional Forensic Science Laboratory, Bhopal. It was found that the seized substance is impure coagulated juice of Opium Poppy in which 5.07% anhydrous morphine is present.

Counsel for the applicant submits that the definition of Opium derivatives given under section 2 (XVI) (e) reads as under:-

“(e) all preparations containing more than 0.2 percent, of morphine or containing any diacetylmorphine”

Counsel for the applicant submits that as the percentage of anhydrous morphine is more than 0.2%, the seized substance is Opium derivative and not Opium. Therefore, it is punishable under section 8(21) of the NDPS Act and not under section 8/18 (b) of the NDPS Act. He also referred the judgment of Hon'ble the Supreme Court in the case of **Amarsingh Ramjibhai Barot Vs. State of Gujarat** reported in **2005 Cri.L.J. 4521**. In this case, percentage of anhydrous morphine was 2.8, therefore, Hon'ble the Supreme Court held that it was Opium derivative and the quantity is prescribed in Entry 93 of Schedule appended to the Act.

After due consideration, the submissions made by counsel for the applicant are acceptable. The report of FSL

clearly shows that it is Opium derivative and, therefore, charge should have been framed under section 8/21 of the NDPS Act.

In this view of the matter, the revision is allowed and the application filed by the present applicant under section 216 of Cr.P.C. is also allowed. Learned Special Judge is directed to alter the charge and also frame the charge in alternative under section 8/21 of the NDPS Act.

With the observation and direction as aforesaid, the revision stands disposed of.

C.c as per rules.

(Alok Verma)
Judge

Kratika/-