

INTHE HIGH COURT OF MADHYA PRADESH:JABALPUR

M.CR.C. No. 50751 of 2020

Ehsad Ansari

vs.

State of Madhya Pradesh

Shri Prakash Upadhyaya, Advocate for the applicant.

Shri Vinod Mishra, PL for the Respondent/State.

ORDER

(2.3.2021)

This is the second bail application filed by the applicant under Section 439 of the Cr.P.C. for grant of bail in connection with Crime No.334/2020 registered at P.S. Gurh, District- Rewa for the offence punishable under Sections 8, 21,22 of NDPS Act & Section 5/13 of Drug Control Act.

First bail application bearing M.Cr.C.No.32883/20 was dismissed as withdrawn vide order dated 4.11.2020.

It is submitted that in the aforesaid order, certain aspects of the provisions of the NDPS Act were not considered, as prima facie no offence is made out against the applicant Punishable under Sections 21 & 22 of the NDPS Act.

As per the prosecution story, the applicant was found in possession of 83 bottles of Onrex Cough Syrup (each bottle contain 100 ml syrup) and the syrup contain narcotic substance codeine and total quantity of the substance was 8300 ML which is more than the commercial quantity.

Learned counsel for the applicant has submitted that in every seized bottle, 5 ml syrup contain 10 mg codeine

phosphate and the syrup is essential narcotic drug containing prescribed narcotic substance and it is not a manufactured narcotic drug as defined in the NDPS Act and possession, transport, import, sale, purchase, consumption and use of 'essential narcotic drug' will be governed by Chapter VA of the NDPS Rules which are contained in Rule 52A to 52M. Any violation of the aforesaid Rules is not separately made punishable and any contravention of these Rules shall be punishable under Section 32 of the NDPS Act for which maximum period of sentence is six months. Section 21 of the NDPS Act is not applicable in the present case. It is, therefore, prayed that the applicant is entitled to get the benefit of bail.

Learned Panel Lawyer opposed the application and submitted that the aforesaid drug comes into definition of 'manufactured drug' but the same will also be considered as essential narcotics drug, if it is prepared for medical and scientific use in the prescribed limit by the authorised manufacturer and possessed or sell, purchase or transport as per the Rules.

So far as the present case is concerned, it is not a case of the applicant that he is manufacturer, seller, purchaser, transporter or in possession of the aforesaid essential narcotic drug for the purpose of therapeutic or scientific use. Therefore, he cannot claim that he cannot be punished for having possession of manufacturing drug under Section 21 of the NDPS Act. The provision of Section 32 of the Act with regard to violation of the Rule 52(2) of the NDPS Rules as would be applicable to them who are dealing with the essential narcotic drug for manufacturing, selling, purchase and transporting the drug for therapeutic

use.

Having considered the contentions of the learned counsel for the parties and on perusal of the record, in view of this Court, contentions of the learned counsel for the applicant has no substance, as the question raised here has already been answered by the Apex Court in **Mohd. Sahabuddin & another vs. State of Assam** [(2012) 13 SCC 491] and held that :-

11. The submission of the learned counsel for the appellants was that the content of the codeine phosphate in each 100 ml bottle if related to the permissible dosage, namely, 5 ml would only result in less than 10 mg of codeine phosphate thereby would fall within the permissible limit as stipulated in the Notifications dated 14-11-1985 and 29-1-1993. As rightly held by the High Court, the said contention should have satisfied the twin conditions, namely, that the contents of the narcotic substance should not be more than 100 mg of codeine, per dose unit and with a concentration of not more than 2.5% in undivided preparation apart from the other condition, namely, that it should be only for therapeutic practice. Therapeutic practice as per dictionary meaning means “contributing to cure of disease”. In other words, the assessment of codeine content on dosage basis can only be made only when the cough syrup is definitely kept or transported which is exclusively meant for its usage for curing a disease and as an action of remedial agent.

12. As pointed out by us earlier, since the appellants had no documents in their possession to disclose as to for what purpose such a huge quantity of Schedule H drug containing narcotic substance was being transported and that too stealthily, it cannot be simply presumed that such transportation was for therapeutic

practice as mentioned in the Notifications dated 14-11-1985 and 29-1-1993. Therefore, if the said requirement meant for therapeutic practice is not satisfied then in the event of the entire 100 ml content of the cough syrup containing the prohibited quantity of codeine phosphate is meant for human consumption, the same would certainly fall within the penal provisions of the NDPS Act calling for appropriate punishment to be inflicted upon the appellants. Therefore, the appellants' failure to establish the specific conditions required to be satisfied under the aboveresferred to notifications, the application of the exemption provided under the said notifications in order to consider the appellants' application for bail by the courts below does not arise.

In view of the aforesaid, it is clear that the arguments made by the learned counsel for the applicant has no substance and the applicant cannot take benefit of the provisions facilitating the business of essential narcotics substance for therapeutic use.

Having considered the facts and circumstances of the case, in view of this Court, the applicant is not entitled to be released on bail.

This application stands rejected.

(J.P. Gupta)
JUDGE

HIGH COURT OF MADHYA PRADESH :

PRINCIPAL SEAT AT JABALPUR

1	Case Number	M.Cr.C. No.50751/2020
2	Parties Name	Ehsad Ansari Vs. State of M.P.
3	Date of Order	2 nd of March, 2021
4	Bench Constituted of	Hon. Shri Justice J.P. Gupta
5	Order delivered by	Hon. Shri Justice J.P. Gupta
6	Whether Approved For Reporting (AFR)	YES
7	Name of the counsel for the parties	Shri Prakash Upadhyaya, Advocate for the applicant. Shri Vinod Mishra, P.L. for the respondent/State.
8 & 9	Law Laid down & Significant paragraphs number	The drug contains codeine substance will come in the purview of “manufactured drug”. It will be considered as “essential narcotic drug” in place of “manufactured drug” if drug contains less than 2.5% codeine in the mixture of per dose unit and possessed only for therapeutic purposes. Then it would be governed by Chapter VA of the N.D.P.S. Rules which contained in Rule 52A to 52M of the Rules. Otherwise it would be violation of section 21 of the Act. In the present case the Possession of 83 bottle of Onrex Cough Syrup (each bottle contain 100 ml syrup) and the syrup contain narcotic substance codeine (10 mg. codeine in 5 ml. syrup) and total quantity of substance was 8300 ml. which is more than the commercial quantity. Provision of section 21 of the Act would be attracted. The afore-said drug can be considered as “essential narcotic substance” when it would be kept for therapeutic use. Here, the person who was found in the possession of the drug having no concern with the therapeutic use of the drug, therefore, he cannot take plea of being dealt with having possession of essential narcotic drug. Prayer for bail is rejected in view of the provisions of Section 37 of the Act.

(J.P. Gupta)
JUDGE