

The High Court Of Madhya Pradesh

MCRC-25233-2021

(RAJKAMAL NAMDEV Vs THE STATE OF MADHYA PRADESH)

Jabalpur, Dated : 02-08-2021

Heard through Video Conferencing.

Shri Vijay Chandra Rai, learned counsel for the applicant.

Shri Sunil Gupta, learned P.L. for the respondent/State.

Case diary perused.

This is the first application under Section 439 of the Cr.P.C. for grant of bail. Applicant Rajkamal Namdev was arrested on 25/04/2021 in connection with Crime No.153/2021 registered at Police Station Laour, District Rewa (M.P.) for the offence punishable under Sections 8, 21, 22 of the NDPS Act & Section 5/13 of M.P. Drug Control Act.

As per prosecution case, on 25/04/2021 on the information of informant police stopped motor cycle bearing registration No.MP-17-MU-4495, which was being driven by applicant Rajkamal Namdev and co-accused Vikas Gupta was pillion rider and seized 30 bottles of Onerex Cough syrup (100 ml. each) containing codeine phosphate (Narcotic Substance) from their joint possession, which was illegally being carried by them on that bike.

Learned counsel for the applicant submits that the applicant has not committed any offence and has falsely been implicated in the offence. The applicant has no criminal past. He has been in custody since 25/04/2021. The charge-sheet has been filed and conclusion of trial will take time, hence prayed for release of the applicant on bail.

Learned counsel for the respondent/State opposed the prayer and submitted that 30 bottles of Onerex Cough syrup (100 ml. each) containing codeine phosphate were seized from the joint possession of the applicant and co-accused Vikash Gupta and they were not having documents to keep the same in their possession, so looking to the provisions of Section 37 of the NDPS Act, he should not be released on bail.

Hon'ble Apex Court in the case of *Mohd. Sahabuddin Vs. State of Assam, (2012) 13 SCC 491* observed as under :-

"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 above referred 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."

Hon'ble Apex Court in the case of *State of Punjab Vs. Rakesh Kumar, 2018 SCC OnLine SC 2651* after relying earlier judgment of Hon'ble Apex Court passed in the case of *Union of India Vs. Sanjeev V. Deshpande, (2014) 13 SCC 1* held that dealing in narcotic drugs and psychotropic substances is permissible only when such dealing is for medical purposes or scientific purposes. Further, the mere fact that the dealing in narcotic drugs and psychotropic substances is for a medical or scientific purpose does not by itself lift the embargo created under Section 8(c). Such a dealing must be in the manner and extent provided by the provision of the Act, rules or orders made thereunder. Sections 9 and 10 enable the Central and the State Governments respectively to make rules permitting and regulating various aspects (contemplated under Section 8(c), of dealing in narcotic drugs and psychotropic substances).

In light of the above judgements of the Apex Court, henceforth, if anyone is found in possession of cough syrup or medicine containing Codeine Phosphate without valid documents, then the case will come under the stringent provisions of the NDPS Act.

According to the Central Government notification dated 18.11.2009 the total Mixture recovered from the applicant will have to be taken into account without calculating the percentage of a narcotic drug and psychotropic substance separately to calculate the small and commercial quantity limit. Therefore, by application of the aforesaid notification, the percentage of a narcotic drug and psychotropic substance shall be inseparable and the whole contraband seized has to be taken into consideration that whether the same falls within the small quantity or commercial quantity or an intermediate quantity. The said notification was further upheld by Apex Court in the case of *Harjit Singh vs. State of Punjab, (2011) 4 SCC 441* wherein it is held that under the notification the whole quantity of material recovered in form of the mixture has to be considered for the purpose of imposition of punishment.

The Apex Court in the case of *Heera Singh Vs. Union of India, 2020 SCC Online SC 382* held that in case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into

consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances.

It is alleged that the police seized 30 bottles (100 ml. each) of Onerex Cough syrup containing Codeine Phosphate (manufactured drugs) from the joint possession of applicant & Co-accused Vikas Gupta, so looking to the provisions of Section 37 of the N.D.P.S. Act, this Court is not inclined to grant bail to the applicant.

Accordingly, M.Cr.C. is rejected.

**(RAJEEV KUMAR DUBEY)
JUDGE**

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