

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL  
MISCELLANEOUS CRIMINAL CASE NO.5054 OF 2021**

**BETWEEN:-**

**1. RAHUL GUPTA, S/O SHRI  
GULAB GUPTA, AGED ABOUT 21  
YEARS, OCCUPATION  
AGRICULTURIST R/O VILLAGE  
PADARIYA POLICE STATION  
KOTWALI SIDHI, DISTRICT SIDHI  
(MADHYA PRADESH)**

**.....APPLICANT**

**(BY SHRI MAYANK SHARMA-ADVOCATE)**

**AND**

**STATE OF MADHYA PRADESH  
THROUGH POLICE STATION  
KOTWALI SIDHI DISTRICT SIDHI  
(MADHYA PRADESH)**

**...RESPONDENT**

**(BY SHRI AJAY TAMRAKAR-PANEL LAWYER)**

-----  
Reserved on :19.06.2023

Pronounced on :03.07.2023  
-----

*This application having been heard and reserved for orders, coming*

*on for pronouncement this day, the Court pronounced the following:*

**ORDER**

This application under Section 482 of the Code of Criminal Procedure has been filed assailing the revision order dated 10.09.2020 passed by Additional Sessions Judge/Special Judge SC/ST (Prevention of Atrocities) Act, Sidhi whereby revision preferred against the order dated 27.08.2020 passed by learned Chief Judicial Magistrate Sidhi, has been dismissed on the ground that same is not maintainable as order is interlocutory in nature.

2. As per prosecution case, on 03.08.2020, on the basis of secret information received by police City Kotwali a white coloured Scorpio bearing registration No.MP-53-TA-1400 was intercepted, in it, two persons namely Rahul Gupta and Ravendra Singh @ Arjent Singh were found sitting. In search of vehicle, 274 bottles of Onrex cough syrup having codeine phosphate were seized from the possession of both the accused. Seizure memo was prepared and after completing the procedure applicant was arrested. After investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Sidhi.

3. Learned counsel for the applicant has submitted that learned CJM, Sidhi vide order dated 04.08.2020 had released applicant Rahul Gupta on bail, as he was of the view that quantity of seized codeine phosphate is small quantity. It is further submitted that on 27.08.2022

police Kotwali furnished a report alleging that in the seized cough syrup the total quantity of codeine phosphate is 54.8 gram which is commercial quantity and a case under NDPS Act is made out, which is exclusively triable by the Court of Special Judge, NDPS Act, Sidhi. Therefore, learned CJM considering the report and relying on the judgment passed in **Prahlad Singh Bhati vs N.C.T., Delhi & another (2001) 4 SCC 280** cancelled the bail granted to applicant by him and directed the police to arrest the accused and produce him before Special Judge NDPS Act along with charge sheet. Feeling dissatisfied and aggrieved by the aforesaid order dated 27.08.2020, a revision was preferred before learned ASJ, Sidhi, who finding the order interlocutory in nature, dismissed the revision application vide order dated 10.09.2020. Hence, this petition has been filed.

4. Learned counsel for the petitioner has argued that orders dated 27.08.2020 and 10.09.2020 being erroneous be set aside, as before cancellation of bail order, accused was not served with any notice and learned CJM has passed order without giving any opportunity of hearing to the petitioner. It is further submitted that learned ASJ was not justified to hold that order is interlocutory in nature. Thus, he has prayed for setting aside both the orders.

5. On the other hand, learned Panel Lawyer for the respondent/State has submitted that it is a case of commercial quantity. In a case punishable under Section 8/20 of NDPS Act CJM had no right to grant bail in a case where commercial quantity of narcotic was seized. Bail was granted under a misconception that

seized quantity of codeine phosphate is a small quantity, but when learned CJM was apprised with the correct position by Investigating Agency by moving application in the Court, he by hearing learned counsel for the parties has passed the order dated 27.08.2020, which is as per law. Learned Panel Lawyer has vehemently opposed the argument by the learned counsel for the applicant that order was passed behind the back of applicant/accused.

6. I have heard learned counsel for the parties and perused the record.

7. On a perusal of order dated 27.08.2020, it is apparent that before passing said order, learned counsel for applicant Rahul Gupta who had appeared in the Court through Video-Conferencing was duly heard and same is apparent from the order itself. Therefore, the argument by learned counsel for the petitioner that the order was passed without giving any notice behind the back of the applicant being contrary to the facts apparent on the face of record, being worth discard is repelled.

8. It is a settled position of law that Court in exercise of power under Section 437(5) as well as Section 439(2) Cr.P.C. can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences, which may not be necessary always with order of cancelling of earlier bail. Section 437 of Cr.P.C. deals with the provision when bails can be taken in case of non-bailable offence. Section 437(5), which is relevant, for the present controversy is as follows:-

“(5) Any Court which has released a person on bail under sub- section (1) or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.”

9. On a plain reading of Section 437(5) of Cr.P.C., it is apparent that it empowers the Court to arrest an accused and commit him to custody, who has been released on bail under Chapter XXXIII of the case. There may be numerous grounds for exercise of power under Section 437(5). The principles and grounds for cancelling a bail are well settled.

10. In the case on hand, accused was erroneously granted bail by the learned CJM as he was under wrong impression that seized quantity is a small quantity. It is trite in law that a person against whom serious offences have been registered or added, who is already on bail can very well be directed to be arrested and committed to custody by the Court in exercise of power under Sections 437(5) and 439(2) Cr.P.C. Cancelling the bail granted to an accused and directing him to be arrested and taken into custody can be one course of action, which can be adopted while exercising power under Sections 437(5) and 439(2) Cr.P.C. but there may be cases where without cancelling the bail granted to an accused, on relevant consideration, Court can direct the accused to be arrested and committed to custody. If the Court under any erroneous assumption has granted bail, in such cases, Court can direct the accused to be arrested and committed to custody despite the bail having been granted with regard to the offences with which he was charged at the

time when bail was considered and granted.

11. Adverting to the facts of this case, it is apparent that 274 bottles of Onrex cough syrup having codeine phosphate were seized from the possession of the present applicant. In the case of **Hira Singh and another vs. Union of India and another (2020) 20 SCC 272** along with other questions, following question was referred to a larger bench:

“ Does the NDPS Act envisage that the mixture of narcotic drug and seized material/substance should be considered as a preparation in totality or on the basis of the actual drug content of the specified narcotic drug?

Three judges bench of Hon’ble Apex Court in *Hira Singh (supra)* answered the reference as under:

12.1. The decision of this Court in the case of E. Micheal Raj taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

12.2. 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;

**12.** From the decision of the Apex Court in the case of *Hira Singh (Supra)*, it is apparent that in the case of seizure of mixture of narcotic drugs or psychotropic substance with one or more neutral substance, the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with the actual content by weight of the offending drug, while the determining the “small quantity or commercial quantity” of Narcotic Drugs or Psychotropic Substance.

**13.** In the instant case, 274 bottles of Onrex Cough Syrup having codeine phosphate have been seized from the possession of the applicant. It is apparent that seized quantity was commercial quantity and applicant had to be produced before the Special Judge, NDPS Act, Sidhi but police under misconception produced him before the Court of CJM who erroneously granted bail but when Investigating Agency moved the application informing that seized quantity was commercial quantity and offence is punishable under Section 8/20 of NDPS Act, learned CJM exercising power under Section 437(5) of Cr.P.C. after hearing the learned counsel for both the parties, has passed the order cancelling the bail and directing police to arrest applicant and produce him before the Special Court having jurisdiction to try the case.

**14.** In the wake of aforesaid discussion, no illegality, impropriety

or incorrectness is visible in the impugned orders passed by the Courts below.

**15.** Therefore, this petition under Section 482 of Cr.P.C. filed by the applicant being devoid of merit is **dismissed**.

**(DINESH KUMAR PALIWAL)**  
**JUDGE**