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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 1136/2021

MOHD AHSAN

.....Petitioner

Through: Mr. Amjad Khan, Advocate

versus

CUSTOMS

.....Respondent

Through: Mr. Satish Aggarwala, Sr. Standing Counsel

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

22.07.2025

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1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in the proceedings arising from Complaint Case No. 62/2020 registered under Sections 21 (c) and 23 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. Customs (IGI Airport, Delhi).

2. Briefly stated, the facts of the case of the Prosecution are as follows:

2.1. The Applicant was scheduled to travel to Saudi Arabia on Flight No. SV761/04 on 4th August, 2019, when he was intercepted by security personnel at Indira Gandhi International Airport, New Delhi. Owing to the suspicions raised by the security staff, he was handed over to the representatives of Saudi Arabian Airlines, who subsequently transferred

¹ "BNSS"

² "Cr.P.C."



him, along with his baggage, to the Customs Authorities for further investigation.

2.2. A notice under Section 50 of the NDPS Act was served on the Applicant, and his personal search was conducted. However, no incriminating material was recovered from his person.

2.3. Thereafter, upon unsealing the Applicant's baggage, two large packets wrapped in brown adhesive tape were found concealed therein. Upon opening the first packet, 55 bottles of Phensedyl were recovered. The second packet was found to contain an identical quantity of 55 bottles of Phensedyl. The bottles from each packet were segregated, properly packed in corrugated boxes, and marked as P-1 and P-2, respectively. Each of the recovered bottles was found to contain Codeine Phosphate, which is classified as a manufactured drug under the NDPS Act.

2.4. Samples from the seized material were drawn and dispatched to the chemical laboratory for analysis. As per the laboratory report dated 1st October, 2019, all samples tested positive for the presence of Codeine Phosphate. The seizure constituted a commercial quantity, amounting to 11,000 ml of the narcotic drug, contained within 110 bottles of Phensedyl Cough Linctus, each of 100 ml capacity.

2.5. Pursuant to the foregoing, Complaint Case No. 62/2020, was filed before the Special Judge (NDPS) Dwarka Courts. Charges were framed against the Applicant for offences under Section 21 (c) and 23 (c) of the NDPS Act for possession of narcotics substances.

3. On 25th June, 2021, when the present application was listed for hearing before this Court, counsel for the Customs, placing reliance upon the



judgment of the Supreme Court in *Hira Singh v. Union of India*,³ contended that for the purposes of determining whether the recovered substance comprises “small” or “commercial” quantity, the total weight of the manufactured drug or preparation, including the neutral substance, is to be taken into consideration. Conversely, counsel for the Applicant, relying on the judgment of this Court in *Iqbal Singh v. State*,⁴ argued that only the actual weight of Codeine present in each bottle should be considered for such determination, which, in the present case, would classify the contraband as an “intermediate” quantity. The Court was therefore, faced with the question as to whether the presence of only 0.17% Codeine content per bottle would qualify the substance as a “commercial quantity.”

4. In this context, noting that the judgment of this Court in *Iqbal Singh* was contrary to the plain reading of the judgement of Supreme Court in *Hira Singh*, this Court considered it appropriate to make a reference to a Division Bench in order to rule out any ambiguity. Pending the outcome of this reference, the Applicant was granted interim bail for a period of 90 days. This interim relief was subsequently extended from time to time while the reference remained under consideration before the Division Bench.

5. Subsequently, the Division Bench, by judgment dated 16th September, 2022, answered the reference in the following terms:

“46. In view of the foregoing analysis of various provision of the NDPS Act, NDPS Rules, The Drugs and Cosmetics Act and the Drugs and Cosmetics Rules and the judgments referred to, we answer the reference in the following terms:

Question - “(c) whether Note 4 of the S.O. 1055 (E) dated 19th October, 2001 published in the Gazette of India, Extra., Pt.II, Sec3 (ii) dated 19th October 2001, as amended on 18.11.2009, should be made

³ (2020) SCC OnLine SC 382.

⁴ BAIL APPLN.645/2020, decided on 31st July, 2020.



applicable to cough syrups containing miniscule percentage of Codeine since it has medicinal value and is also easily available?”

Ans: If the contraband recovered in a particular case is covered by Rule 52A of the NDPS Rules made under Section 9(1)(a)(va) of the NDPS Act, then violation of the said Rules would be punishable under the NDPS Act. In that situation, Note 4 of the S.O. 1055 (E) dated 19th October, 2001 would be applicable to such substances including cough syrup.

“47. As far as the questions (a) and (b) referred to us by the learned Single Judge are concerned, the same are squarely covered by the judgment of the Hon’ble Supreme Court in Hira Singh (supra) wherein the Hon’ble Supreme Court was disposing of a reference as well as a challenge to the validity of notification bearing no. S.O. 2941(E) dated 18.11.2009, adding ‘Note 4’ to the notification bearing no. S.O. 1055(E) dated 19.10.2001. The Hon’ble Supreme Court in Hira Singh (supra) has clearly held as under:

“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.”

48. In view of the aforesaid decision, the questions (a) and (b) referred to us are answered as follows:

Question - “(a) whether in cases specifically related to manufactured drug with a miniscule percentage of a narcotic substance, the weight of the neutral substance ought to be ignored while determining the nature of the quantity seized i.e. small, commercial or in between?”

Ans: If the contraband seized falls within the provisions of NDPS Act, the weight of the neutral substance would not be ignored while determining the nature of the quantity seized, whether small quantity, commercial quantity or in between.

Question - “(b) whether Note 4 of the S.O. 1055 (E) dated 19th October, 2001 published in the Gazette of India, Extra., Pt.II, Sec3 (ii) dated 19th October 2001, as amended on 18.11.2009, should be held inapplicable to manufactured drug which contain a miniscule percentage of a narcotic drug?”

Ans: If the alleged contraband seized falls within the definition of „manufactured drug” under Section 2(xi) of the NDPS Act, then the entire notification including the aforesaid „Note 4” will be applicable.

49. Having answered the questions referred to us, this matter may be placed before the appropriate bench for considering the question of grant of bail.”



6. A perusal of the aforementioned observations reveals that the Division Bench has answered the questions framed by the Single Judge in favour of the Prosecution. While delivering the said judgment, the Division Bench had also specifically directed that the Applicant's bail application be listed for consideration before the appropriate Bench. However, notwithstanding these directions, the Registry failed to place the matter for hearing on the bail application.

7. Subsequently, upon noticing this lapse, the Registry listed the matter before this Court on 17th February, 2025. On the said date, while seeking an explanation from the Registry for the delay, this Court, in view of the peculiar facts and circumstances of the case, extended the interim bail granted to the Applicant on the same terms and conditions as previously imposed. The Prosecution has now filed its reply to the bail application, opposing the grant of regular bail to the Applicant.

8. The Court has heard counsel for both parties and carefully considered their respective submissions. In the present case, although the issues referred to the Division Bench have been answered in favour of the Customs Department, it is pertinent to note that the Applicant has remained on interim bail since 25th June, 2021. The said interim bail has been extended from time to time, and at no point has the Applicant violated any of the conditions imposed by this Court. The Applicant has diligently complied with all directions of this Court and has appeared before the Trial Court on each and every date of hearing without fail. Further, the Prosecution has not levelled any allegation against the Applicant suggesting misuse of the liberty granted to him.



9. Furthermore, since the filing of the present application, the trial has progressed significantly, and the matter is presently at the stage of recording prosecution evidence. The order of the Trial Court, annexed with the reply filed by the Customs, clearly reflects that some of the prosecution witnesses have already been examined.

10. It is well established through catena of judgments by the Supreme Court that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of the accused person at the trial.⁵ In the present case, the Applicant has not absconded at any point and has fully cooperated with the legal process. There are no allegations of tampering with evidence or attempting to influence witnesses. In light of the foregoing facts and circumstances, and taking into consideration the overall conduct of the Applicant, the substantial passage of time, the advanced stage of the trial, and the fact that the Applicant has remained on interim bail throughout without misusing the liberty granted, this Court is of the considered view that the Applicant is entitled to be released on regular bail.

11. Accordingly, the Applicant is admitted to regular bail on the same terms and conditions as those set forth in the interim bail order dated 25th June, 2021.

12. Needless to state, any observations concerning the merits of the case are solely for the purpose of deciding the question of grant of bail, and shall not be construed as an expression of opinion on the merits of the case.

13. Copy of the order be sent to the concerned Jail Superintendent for

⁵ See also: *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



necessary information and compliance.

14. In view of the above, the present application is allowed and disposed of.

SANJEEV NARULA, J

JULY 22, 2025/ab