

Kulwant Rai @ Rana vs State Of Punjab on 8 December, 2020

Author: Harinder Singh Sidhu

Bench: Harinder Singh Sidhu

CRM-M-24656-2019(0&M) and connected matter [1]

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.M-24656 of 2019(0&M)
Date of Decision: December 08, 2020

Kulwant Rai @ Rana ...Petitioner

Versus

State of Punjab ...Respondent

and

Criminal Misc. No.M-4539 of 2020(0&M)

Kamal Kumar @ Kamal ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.S.S.Rana, Advocate for the petitioner
(in CRM-M-24656-2019)

Mr.Kanwaljeet Singh, Advocate for the petitioner
(in CRM-M-4539-2020)

Mr.Randhir Singh Thind, DAG, Punjab.

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HARINDER SINGH SIDHU, J.

This order shall dispose of two petitions i.e. CRM-M-24656- 2019 (filed by Kulwant Rai @ Rana)

and CRM-M-4539-2020 (filed by Kamal Kumar @ Kamal) under Section 439 CrPC in case FIR No.0008 dated 24.01.2019 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1988, Police Station Doraha, District Ludhiana.

The allegations are that on 24.01.2019 the petitioners along 1 of 5 CRM-M-24656-2019(O&M) and connected matter [2] with one Sunny were seen coming from the side of Bus Stand. On suspicion they were apprehended and search was conducted. 35 intoxicant injections containing Buprenorphine (2 ml each) and 35 intoxicant injections of Avil weighing 10 ml each were recovered from petitioner Kulwant Rai @ Rana.

30 intoxicant injections containing Buprenorphine (2 ml each) and 30 intoxicant injections containing 'Avil' weighing 10 ml each were recovered from petitioner Kamal Kumar @ Kamal.

It is stated on behalf of the petitioners that the recovery is planted one. It is argued that alleged recovery of 'Avil' injections containing 10 ml each are non-psychotropic substance and it does not fall under the Schedule of offence under the NDPS Act.

Ld. Counsel for the petitioners have further argued that as per the first proviso to Rule 66(2) of the NDPS Rules, 1985, it is permissible for a person to possess upto hundred dosage units of psychotropic substance for his 'personal medical use' even without the prescription of a Registered Medical Practitioner. As per the second proviso to Rule 66(2) an individual may possess more than one hundred dosage units at a time but not exceeding three hundred dosage units for his long term medical use if specifically prescribed by a Registered Medical Practitioner. It has accordingly been argued that for the alleged possession of (35 and 30 intoxicant injections containing Buprenorphine weighing 2 ml each from petitioners Kulwant Rai and Kamal Kant respectively) no offence under Section 22 of the NDPS ACT against them is made. Reliance has also been placed on various orders of this Court where bail has been granted in cases where the alleged recovery was more than in the present case.

2 of 5 CRM-M-24656-2019(O&M) and connected matter [3] It is not possible to accept the contention of the Ld. Counsel for the petitioner based on Rule 66 of the NDPS Rules.

The question has been considered in detail in Sarabjit Singh alias Sabbi Vs.State of Punjab 2018(5) R.C. R. (Criminal) 883. It has been held therein that it is not open to an accused to seek the aid of Rule 66 of the NDPS Rules to defeat the substantive provisions of the NDPS Act which penalise the possession of any psychotropic substance. The aforesaid judgment has been relied upon in CRM-M-21317-2018 Soma Ram @ Soma Singh Vs. State of Punjab decided on 29.10.2018 and the argument based on Rule 66 of the NDPS Rules was rejected and bail was declined.

Rule 66 is reproduced below:

"Possession etc. of psychotropic substances:

(1) No person shall possess any psychotropic substance for any of the purposes covered under 1945 Rules, unless he is lawfully authorized to possess such substance for any of the said purposes under these rules:

Provided that possession of a psychotropic substance specified in Schedule I shall be only for the purposes mentioned in Chapter VII A. (2) Notwithstanding anything contained in sub-rule (1), any research institution, or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorized to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorized under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said institution or, as the case may be, the said hospital

3 of 5 CRM-M-24656-2019(O&M) and connected matter [4] or dispensary or person.

Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time.

Provided further that an individual may possess the quantity exceeding one hundred dosage units at a time (but not exceeding three hundred dosage units at a time) for his personal long term medical use if specifically prescribed by a Registered Medical Practitioner. (3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession." As per Rule 66(2) any person not so authorised under the Drugs and Cosmetic Rules, 1945 may possess a reasonable quantity of psychotropic substance for 'genuine medical requirements'. The first and second proviso prescribe the limit.

Evidently, the permissive provision of Rule 66 (2) comes into play only when the possession is for 'genuine medical requirements' and the first proviso thereto which permits possession of upto hundred dosage units of psychotropic substance is attracted when the possession is for 'personal medical use'. There can be no presumption that any person found in possession of psychotropic substance upto the limit specified in the first proviso possesses it for his 'personal medical use'. No such presumption is envisaged under the Rule. In fact, such a presumption would negate the provisions of Section 8 of the NDPS Act which prohibits the possession etc. of psychotropic substances except for medical or scientific purposes and in the manner and to the extent provided by the provisions of the Act, or rules 4 of 5 CRM-M-24656-2019(O&M) and connected matter [5] or orders made thereunder.

Whether the possession of the psychotropic substance was for 'personal medical use' is eventually an issue that can only be determined at the time of trial. Yet to avail of the benefit of the first proviso to Rule 66 (2) at the stage of bail there has to be some material to indicate that the possession by the person was only for his/her personal medical use. In the very least, the person should have in his

possession a bill indicating the purchase of the substance from an authorised chemist. There is none in the present case. So the argument based on Rule 66 can be of no avail to the petitioner.

The petitioners are in custody since 24.1.2019. It is no doubt true that the trial of the case has been delayed in view of the Covid -19 pandemic. But that of itself can be no ground to disregard the provisions of Section 37 of the NDPS Act, 1985 regarding bail specially taking note of the extent of the recovery from the petitioners.

Petitions dismissed.

December 08, 2020
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned

Yes

Whether Reportable

Yes / No

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