

55 31.10.2017
rp Ct. No. 28

C.R.M. 9230 of 2017

RASHID SK.

. . . PETITIONER

VERSUS

STATE OF WEST BENGAL

. . . OPPOSITE PARTY

In Re : An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Jalangi P.S. Case No.191/17 dated 05.03.2017 under Section 21(c)/29 of the NDPS Act corresponding to NDPS Case No. 121 of 2017.

Mr. Niladri Sekhar Ghosh

.....for the Petitioner

Mr. Sanjay Bardhan
Mr. Saryati Dutta

.....for the State

Rejected

Petitioner is in custody for more than 210 days and it is submitted that he has been falsely implicated in the instant case.

Learned counsel appearing on behalf of the State opposes the prayer for bail and submits that the petitioner was found in possession of 600 bottles of phensedyl cough syrup containing codeine.

It has been argued that phensedyl cough syrup containing codeine does not fall within the category of narcotic substance under NDPS Act. Reliance is placed on reported in **2017 (3) Crimes 147 (Binod Kumar @ Binod Kumar Bhagat vs. State of Bihar)**. In the said report, seizure had been effected of corex cough syrup containing codeine which was stored in the godown of the transporter under a consignment note for transportation of another drug to a consignee. In the said report, reference has been made to the judgment of the Delhi High Court delivered on 1.12.2016 in **W.P.(C) No.2212/2016 (Pfizer**

Limited & Anr vs. Union of India & Anr.)

In the instant case the petitioner was found in illicit possession of phensedyl syrup containing codeine which a manufacture drug appearing in Item 28 of the table appended to NDPS Act.

Section 80 of NDPS Act reads as follows:-

“Application of the Drugs and Cosmetics Act, 1940 not barred.- The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.”

The aforesaid provision makes it amply clear that the provisions of the NDPS Act shall have effect in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 or the rules made thereunder.

Hence, we are of the view that the decision of the Delhi High Court in ***Pfizer Limited (supra)*** which quashes the government order purporting to prohibit manufacture, transport, sale or distribution of Fixed Drug Combinations does not impact the operation of the provisions of NDPS Act, particularly when the petitioner does not even purport to deal in drugs under the Drugs and Cosmetics Act. It is a settled principle of law that a judgment is an authority for the proposition it decides and not what logically follows therefrom. It was in the factual matrix of the cited case wherein the Apex Court granted bail to the transporter who had stored corex cough syrup under a consignment note purporting to be another drug to be dispatched to a consignee dealing in therapeutic drugs and no law had been declared therein that the illicit possession and transportation of codeine or phensedyl syrup containing codeine for non-therapeutic purposes would not attract the provisions of NDPS Act. On the other hand, in ***Mohd. Sahabuddin vs. State of Assam, (2012) 13 SCC 491***, the Apex Court rejected the bail prayer of accused persons

who were transporting phensedyl cough syrup containing codeine for commission of offence under the NDPS Act as they were unable to give explanation as to illicit possession of the cough syrup for therapeutic purposes. Hence, we are of the view that the cited case is of little assistance to the petitioner.

Having considered the materials in the case diary, prima facie involvement of the petitioner in the alleged possession of the phensedyl cough syrup containing codeine which is above commercial quantity and in view of the statutory restriction under section 37 of the NDPS Act, we are not inclined to grant bail to the petitioner.

The prayer for bail is, accordingly, rejected.

(Moushumi Bhattacharya, J.)

(Joymalya Bagchi, J.)