

SUPREME COURT OF INDIA

State of Punjab

Vs.

Rakesh Kumar

CrI.A.No.1512 of 2018

(N.V.Ramana and Mohan M.Shantanagoudar and M.R.Shah, JJ.,)

03.12.2018

JUDGMENT

N.V.Ramana, J.,

SLP(CrI)No.4762 of 2018

1. Leave granted.

2. The present appeals are filed by the State having been aggrieved by the common judgment and order dated 29th January, 2018 passed by the High Court of Punjab and Haryana, allowing the applications for suspension of sentence, preferred by the accused-respondents herein under Section 389 Cr.P.C. and directing to release them on bail, while the Appeals are pending in the High Court.

3. In order to appreciate the merits of these appeals, brief facts which have emerged from the case of the prosecution need to be noted at the outset. In all these appeals, the accused-respondents were apprehended with “manufactured drugs” and convicted by the Trial Court for offences committed under Section 21 or Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “N.D.P.S Act”). The alleged offences and conviction recorded by the Trial Court against the respondents are listed below:

4. Aggrieved by the Judgment and conviction by the respective Trial Courts, the accused-respondents approached the High Court through various appeals. The accused-respondents, during the pendency of the appeals, preferred an application seeking suspension of sentence. Since a common question of law was involved in the above appeals, the High Court heard the matters together and passed a common order dated 29.01.2018, allowing the applications for suspension of sentence preferred by the accused-respondents. The High Court observed that manufactured drugs, be it containing narcotic drugs or psychotropic substances, if manufactured by a manufacturer, must be tried, if violation is there, under the Drugs and

Cosmetics Act and not under the NDPS Act, except those in loose form by way of powder, liquid etc. Dissatisfied by the above order dated 29.01.2018, the State has preferred the present appeals.

S.No.	CASE NO.	NAME OF ACCUSED	RECOVERY	CONVICTION	JUDGMENT BY & DATE
1.	CRA-S-840-SB-2015	Rakesh Kumar	3500 tablets of Microlit containing Diphenoxylate salt	U/s 22 of NDPS Act – 10 years RI & Rs.1.00 lac fine.	Special Judge. Sri Muktsar Sahib – 18.11.2014
2.	CRA-S-227-SB-2015	Anwar Khan @ Soni	3.900 kgs of intoxicating powder containing Dexiropoxyphen e salt	U/s 22 of NDPS Act – 10 years RI & Rs.1.00 lac fine.	Judge, Special Court, Sangrur – 17.11.2014
3.	CRA-S-	Monnu	81.76 gms salt Diphenoxylate	U/s 22 of NDPS Act	Special Judge.
	3148-SB-2015		Hydrochloride	– 10 years RI & Rs. 1.00 lac fine.	Ferozepur – 04.06.2015
4.	CRA-S-4134-SB-2015	Dharmu	Diphenoxylate powder in commercial quantity	U/s 22 of NDPS Act – 10 years RI & Rs.1.00 lac fine.	Judge, Special Court, Ludhiana – 25.05.2015
5.	CRA-S-5246-SB-2015	Gurwinder Singh	70 gms containing Diphenoxylate salt	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Ludhiana – 10.11.2015
6.	CRA-S-71-SB-2016	Mohd. Akhtar @ Soni	19110 mls of intoxicating liquid 10 capsules of Parvon Spas, 10 tablets of Euphoria	U/s 22 (a) & 2(c) of NDPS Act – 1 year RI & Rs.5000/- fine and 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Sangrur – 09.12.2015
7.	CRA-S-323-SB-2015	Munish Kumar	15 Vials of Rexcof	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Bathinda – 09.01.2015
8.	CRA-S-200-SB-2017	Gudawar Ram @ Gabbu	60 gms intoxicating powder containing Diphenoxylate salt	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, SBS Nagar – 09.12.2016
9.	CRA-	Baljinder	7500 mls of Corex	U/s 22 of	Judge,

	S-766-SB-2017	Singh @ Banty	syrup containing Codeine phosphate	NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Special Court, Sangrur – 20.12.2016
10.	CRA-S-1413-SB-2017	Sukhraj Kaur @ Raj	120 bottles of Rexcof containing Codeine phosphate	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Sangrur – 08.03.2017
11.	CRA-S-4055-SB-2016	Gurpreet Singh @ Gopi	25 gms Heroin & 250 gms intoxicating powder containing Alprazolam	U/s 21 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Amritsar – 06.09.2016
12.	CRA-S-2933-SB-2016	Salwinder Singh @ Shinda	320 gms intoxicating powder containing Diphenoxylate	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Tarn Taran – 09.08.2016
13.	CRA-S-985-SB-2017	Karamjit Singh @ Karma	10 Vials of Rexcof containing Codeine Phosphate	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Faridkot – 04.01.2017
14.	CRA-S-723-SB-2016	Mandeep Singh @ Mani	300 gms intoxicating powder containing Diphenoxylate Hydrochloride	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Addl. Sessions Judge, Amritsar – 23.12.2015
15.	CRA-S-1531-SB-2016	Jagmohan Singh @ Mithu	100 gms intoxicating powder containing Diphenoxylate Hydrochloride	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00	Judge, Special Court, Amritsar – 10.03.2016

				lac fine.	
16.	CRA-S-2398-SB-2017	Nachhatar Singh @ Sonu	60 gms intoxicating powder containing Diphenoxylate	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Tarn Taran – 16.05.2017
17.	CRA-S-1972-SB-2017	Gaurav Bajaj (the other appellant Manpreet Singh)	50 bottles of Rexcof syrup & 250 tablets of Carisona from Gaurav Bajaj 45 bottles of Rexcof syrup & 200 tablets of Carisona from Manpreet Singh	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Fazilka – 17.03.2017
18.	CRA-S-3921-SB-2013	Gurpreet Singh	19 vials of Rexcof, 1200 tablets of Pinotil and 450 tablets of Alprazolam	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Bathinda – 24.10.2013
19.	CRA-S-1529-SB-2017	Jaspal Singh	12 vials of Rexcof containing codeine Phosphate	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Sangrur – 07.03.2017
20.	CRA-S-750-SB-2014	Sanjiv Kumar & Paramjit Singh @ Pamma	1300 tablets weighing 101, 400 gms from Sanjiv Kumar; 400 tablets weighing 31.200 gms from Paramjit Singh @ Pamma	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court-III, Ferozepur – 27.01.2014
21.	CRA-S-4894-SB-2015	Akash Kumar	3500 mls containing Codeine Phosphate	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Sangrur – 16.10.2015

22.	CRA-S-2574-SB-2017	Satnam Singh	20 vials of Rexcof containing Dextropropoxyphene	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Faridkot – 06.07.2017
23.	CRA-S-1616-SB-2017	Amit Kumar Mehta	2000 tablets containing Diphenoxylate Hydrochloride	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Judge, Special Court, Patiala – 01.03.2017
24.	CRA-S-185-SB-2017	Gurjant Singh @ Janta	60 gms intoxicating powder containing Diphenoxylate	U/s 22 of NDPS Act – 10 years RI & Rs. 1.00 lac fine.	Addl. Sessions Judge, Tarn Taran – 20.10.2016
25.	CRM-M-23054-2017	Gurpreet Singh @ Tuli	100 tablets marka Alprazolam in 5 strips, 12 injections Buprenorphine 2 ml, 2 bottles of injections Avil 10 ml & 116 gms intoxicant powder	U/s 22/61/85 of NDPS Act	Judge, Special Court, Jalandhar

5. The counsel on behalf of the appellant-State, while criticizing the impugned order passed by the High Court, drew our attention to the relevant provisions of the N.D.P.S Act and Drugs and Cosmetics Act, 1940, and submitted that, the N.D.P.S Act, itself does not bar the application of the Drugs and Cosmetics Act, 1940. Further, the counsel also argued that, the impugned judgment is in gross violation of the decision rendered in *Inderjeet Singh v. State of Punjab* 2014 (3) RCR (Criminal) 953, by the Division Bench of the Punjab and Haryana High Court. The counsel also relied upon the decision rendered by this Court in *Union of India v. Sanjeev V. Deshpande*¹, wherein it was clearly held that dealing in narcotic drugs and psychotropic substances is permissible only if it is for medical or scientific purposes. But even the usage for medical and scientific purposes is not restriction free, as it is subject to rules under the N.D.P.S Act.

6. On the contrary, the counsel on behalf of the accused-respondents has supported the reasoning of the High Court while stating that it is very farfetched to presume that, any person who is apprehended with bulk quantity of manufactured drug, without having a license for the same, has committed an offence which is liable to be prosecuted under the N.D.P.S Act. The counsel further submitted that, the High Court was correct to conclude

that, it can be considered as a violation of the provisions of the Drugs and Cosmetics Act, 1940. Therefore, there was no error in granting the relief of suspension of sentence, considering that the appeals are not going to be adjudicated in the near future.

7. Heard the learned counsel for both the parties.

8. At the outset it is essential to note the objectives of the two legislations before us, i.e., the Drugs and Cosmetics Act, 1940 and the N.D.P.S Act. The Drugs and Cosmetics Act, 1940 was enacted to specifically prevent sub-standard drugs and to maintain high standards of medical treatment. (See *Chimanlal Jagjivandas Sheth v. State of Maharashtra*²) The Drugs and Cosmetics Act, 1940 was mainly intended to curtail the menace of adulteration of drugs and also of production, manufacture, distribution and sale of spurious and sub-standard drugs. On the other hand, the N.D.P.S Act is a special law enacted by the Parliament with an object to control and regulate the operations relating to narcotic drugs and psychotropic substances. After analyzing the objectives of both the Acts, we can safely conclude that while the Drugs and Cosmetics Act deals with drugs which are intended to be used for therapeutic or medicinal usage, on the other hand the N.D.P.S Act intends to curb and penalize the usage of drugs which are used for intoxication or for getting a stimulant effect.

9. At this juncture, it is also pertinent to note the relevant provisions under the N.D.P.S Act. Section 8 of the 1985 Act, is the prohibitory clause whose violation would lead to penal consequence:

Section 8. Prohibition of certain operations.

-No person shall-

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or transship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorization also in accordance with the terms and conditions of such licence, permit or authorization:

Provided that, and subject to the other provisions of this Act and the rules made there under, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf.

10. Further, Section 21 provides for punishment for contraventions in relation to manufactured drugs and preparations and Section 22 provides for punishment for contraventions in relation to psychotropic substances. Both the above provisions provide for the imposition of rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and the imposition of a fine which shall not be less than one lakh rupees but which may be extended to two lakh rupees, if the recovered substance amounts to commercial quantity. However, the proviso appended thereto empowers the Court, with a discretionary power to impose a fine exceeding two lakh rupees for reasons to be recorded in the judgment.

11. In the present case, the accused-respondents were found in bulk possession of manufactured drugs without any valid authorization. The counsel on behalf of the appellant-State has extensively stressed that the actions of the accused-Respondents amounts to clear violation of Section 8 of the N.D.P.S Act as it clearly prohibits possession of narcotic substances except for medicinal or scientific purposes. In furtherance of the same, the counsel on behalf of the appellant-State has put emphasis on the judgment rendered by this court in the case of Union of India vs. Sanjeev V. Deshpande (supra), wherein it was held that:

“25. In other words, 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 provisions 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.

26. The Act does not contemplate framing of rules for prohibiting the various activities of DEALING IN narcotic drugs and psychotropic substances. Such prohibition is already contained in Section 8(c). It only contemplates of the framing of Rules for permitting and regulating any activity of DEALING IN narcotic drugs or psychotropic substances...”

(emphasis supplied)

12. In the present appeals before us, the trial courts after analyzing the evidence placed before them, held the accused Respondents guilty beyond reasonable doubt and convicted them for offences committed under Section 21 and Section 22 of the N.D.P.S Act.

13. The counsels for the accused-respondents have strongly supported the judgment of the High Court wherein it was held that, since the present matters deal with “manufactured drugs” the present respondents should be tried for the violation of provisions of Drugs and Cosmetics Act, 1940.

14. However, we are unable to agree on the conclusion reached by the High Court for reasons stated further. First, we note that Section 80 of the N.D.P.S Act, clearly lays down that application of the Drugs and Cosmetics Act is not barred, and provisions of N.D.P.S. Act can be applicable in addition to that of the provisions of the Drugs and Cosmetics Act. The statute further clarifies that the provisions of the N.D.P.S Act are not in derogation of the Drugs and Cosmetics Act, 1940. This Court in the case of Union of India vs. Sanjeev V. Deshpande (supra), has held that,

“35. ...essentially the Drugs & Cosmetics Act, 1940 deals with various operations of manufacture, sale, purchase etc. of drugs generally whereas Narcotic Drugs and Psychotropic Substances Act, 1985 deals with a more specific class of drugs and, therefore, a special law on the subject. Further the provisions of the Act operate in addition to the provisions of 1940 Act.”

(emphasis supplied)

15. The aforesaid decision further clarifies that, the N.D.P.S Act, should not be read in exclusion to Drugs and Cosmetics Act, 1940. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. In the present case, since the action of the accused-Respondents amounted to a prima-facie violation of Section 8 of the N.D.P.S Act, they were charged under Section 22 of the N.D.P.S Act.

16. In light of above observations, we find that decision rendered by the High Court holding that the accused-respondents must be tried under the Drugs and Cosmetics Act, 1940 instead of the N.D.P.S Act, as they were found in possession of the “manufactured drugs”, does not hold good in law. Further, in the present case, the accused-respondents had approached the High Court seeking suspension of sentence. However, in granting the aforesaid relief, the High Court erroneously made observations on the merits of the case while the appeals were still pending before it.

17. Considering the facts and circumstances of the present case and the gravity of offence alleged against the accused-respondents, the order of the High Court directing suspension of sentence and grant of bail is clearly unsustainable in law and the same is liable to be set aside.

18. Accordingly the impugned order passed by the High Court is hereby set aside and the concerned authorities are directed to take the accused-respondents herein into custody forthwith.

19. Lastly, the counsels for respondents in Appeals arising out of SLP (Crl) No.4816/2018 and SLP (Crl) No.4817/2018 have specifically pleaded that the respondents have already undergone a considerable period under incarceration. In light of the same, we request the High Court to expedite the hearings and dispose of the appeals accordingly. It is needless to observe that the observations made during the course of this order are only for deciding these appeals.

20. The appeals stand allowed in aforesaid terms. As a sequel pending applications, if any shall also stand disposed of.