

**BEFORE THE COURT OF RAJVINDER SINGH
JUDGE SPECIAL COURT, PATIALA**

BA No. 1441-2021
CNR No. PBPT01-004717-2021
Decided on 20.5.2021.

Gurpreet Singh Vs. State.

FIR No. 55 dt. 9.3.2021
U/s 22/61/85 of NDPS Act.
P.S. Tripuri, Patiala.

Bail application under Section 439 Cr.P.C.

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Present: Sh. Ashu Sharma, counsel for the applicant through VC.
Sh. Sumit Malhotra, Addl. PP for the State.

ORDER

1. Vide instant order this court shall dispose of bail application filed by the accused/applicant Gurpreet Singh @ Garry under Section 439 Cr.P.C in the above noted case.

2. Notice of the bail application was issued.

3. It is submitted by ld.counsel for the accused/applicant that the applicant has been falsely implicated in the instant FIR, who is behind the bars since the date of his arrest i.e., 9.3.2021. In accordance with the allegations averred in the FIR, applicant is shown to have been arrested in possession of 10 bottles of intoxicant liquid make WINCIREX 100 ml each. Accordingly, total quantity of liquid comes out to be 1000 ml. The weight of 1000 ml liquid is below one kilogram. Hence, the alleged recovery effected from the applicant falls in non commercial quantity. Accordingly, he has prayed for concession of bail to the applicant.

4. On the other hand, ld.Addl. PP for the State has opposed the bail application and prayed for its dismissal.

5. Heard. Perusal of case file pending before this court itself reflects apprehension of applicant by the police party on dated 9.3.2021 near Shri Hanuman Temple, Patiala Road, Patiala in possession of a carry bag containing 10 bottles of intoxicant liquid make WINCIREX 100 ml each without any permit or licence. In accordance with the report received from FSL, on analysis of the representative sample same is found to be containing Codeine Phosphate which is prohibited contraband as per Sr. No28 in schedule attached with NDPS Act.

There is no dispute about the fact that in accordance with definition of term commercial quantity as defined in Section 2(viia), it prescribes as under:-

"(viia) " commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette."

Further in accordance with entry at Sr. no. 28 of the notification of Central Government bearing no 1055(E) dated 19.10.2001, possession of one kg. of Codeine Phosphate falls in commercial quantity. In accordance with the same, it is stressed by ld.counsel for the applicant that even if recovery of intoxicant liquid is considered to be one kg., it does not fall in commercial quantity. In support of his contention ld.counsel for applicant has laid reliance upon Iqbal Singh Vs. State of Punjab, Law Finder Doc.Id # 554656, Ratto vs.State of HP, Law Finder Doc. ID # 65797 and Firdous Ahmad Payer Vs State of J&K, Law Finder Doc. ID # 1270705.

It is apparent that the applicant has been allegedly

apprehended in possession of 10 bottles of intoxicant liquid make WINCIREX 100 ml each containing Codeine Phosphate salt. It make total quantity of entire liquid as 1000 ml. Whereas quantity of contraband shown in the notification is in grams (kilogram), which is quantity of mass/weight. Accordingly for measuring the weight of 1000 ml., liquid it is dependent upon the density or specific gravity of the liquid. Kg., stands for kilogram which is a unit of mass whereas ml., stands for milliliter which is a unit for volume.

It is appropriate to mention here that oils etc. if measured in ml./liter and converted into kilogram it may weigh less than one kilogram as density of oil is generally less than one e.g. density of olive oil = 0.916 gram/cc or 0.916 gram/ml. Hence it is noticeable that weight of 1000 ml of olive oil generally is mentioned as 916 grams on its container. In accordance with the same, it is important to clarify the specific kind of liquid if one intends to get its correct weight in kilogram. It depends on kind of fluid being used. Hence one can not compare the mass and volume unless density is specified e.g., one ml. of iron can contain thousands more grams as compared to one ml. of cotton. The density of water is 1gm/cm³. Hence, one ml. of water is equivalent to one gram. On account of the same, since the density of intoxicant liquid is not specified, hence it is to be taken that the accused has been apprehended in possession of 1000 ml. equivalent one kilogram as specified in the schedule. As against the law relied upon by the ld.counsel for the applicant, Hon'ble Supreme Court of India in State of Haryana Vs. Asha Devi, Criminal Appeal no.1953 of 2009, while dealing with the case of Ganja the commercial

quantity of which is specified in the notification to be 20 kg., has specifically observed that the commercial quantity of Ganja is **20 kgs. or more** . In accordance with the aforecited settled position of law laid down by Hon'ble Apex Court, the ratio of afore-cited citations relied upon by ld.counsel for the applicant is not applicable to instant FIR. Hence, it can not be concluded that the possession of one kilogram Codeine Phosphate does not fall in commercial quantity.

For the sake of argument even if it is assumed that the density of liquid recovered from the applicant is lower so as to conclude its weight less than one kilogram even then this court is of the considered opinion that the recovery effected from the applicant is near to commercial quantity. In the said backdrop, this court is constrained to grant concession of bail to the applicant. Accordingly, the instant bail application stands dismissed. This file be tagged with the main file.

Pronounced.
20.5.2021

Mahesh Kumar
Stenographer-I

(Rajvinder Singh)
Judge Special Court
Patiala (UID NO. PB0184)