

M.Cr.C. No.7352/2015

29.05.2015

Shri Umashankar Sharma, learned senior counsel with Shri Om Shankar Pandey learned counsel for the applicant.

Shri Ajay Shukla, learned Government Advocate for the non-applicant/State.

Heard on I.A. No.10490/2015, which is an application moved on behalf of the applicant for taking documents on record in support of the bail application. Looking to the relevancy of the documents vis-a-vis the bail application, the I.A. is allowed and the documents annexed therewith are taken on record.

Also heard arguments on bail application.

Perused case diary and material on record.

This is first bail application filed by the applicant under Section 439 of the Cr.P.C. in connection with Crime No.165/2015 registered at Police Station Kuthla, District Katni against him and co-accused Virendra Tiwari for the offences punishable under Sections 8 r/w 21 and 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

It is the case of prosecution that upon a tip-off, on 25.04.2015 Vipin Singh, the SHO of Police Station Kuthla searched a truck bearing registration No.WB-23B-8591 (for short 'the truck') in accordance with the provisions of the Act. In the course of search, he found in the truck 37200 bottles of Phensedyl Cough Linctus Syrup (for short 'the drug') being kept in 372 cartoons. As per the label of composition being stuck upon each bottle, it contains 100 ml. preparations with 10 mg. Codeine

Phosphate, which is a narcotic substance being derivative of opium. At the time of search, the applicant was sitting on the driver seat and co-accused Virendra Tiwari was sitting beside him in the cabin of the truck. Vipin Singh demanded licence/permit from the applicant and the co-accused for transporting the drug in bulk, but they failed to produce the same. Thereupon, he seized the drug and registered the aforesaid case against them.

Learned counsel for the applicant submits that the applicant is in custody since 25.04.2015. It is also submitted by him that the applicant is a poorly educated paid driver of the truck and he does not know that the drug falls under the category of narcotic drugs. It is further submitted by him that the truck is attached to a transport company by the name of Mishra Freight Carrier, Katni and as per "bilty" given to the applicant the consigner of the drug is M/s Hind Medical Agency, Roopali Complex, Jabalpur and the consignee is M/s Maa Gourie Enterprises, New Medicine Market, Lucknow. Thus, the applicant was transporting the drug under the valid bilty and these facts show the innocence of the applicant. Having referred to the circular letter Nos. X-11029/27-D, dated 26.10.2005 and X-11029/09-D, dated 01.03.2009 issued by the Drugs Controller General India to all the State Drugs Controllers and notifications No.G.S.R. 588(E), dated 30.08.2013 and a letter dated 15.10.2012 issued by the Pharmaceutical Company Abbott, the manufacturer of the drug to its trade partners, he contends that the drug is not a Narcotic Drug as the concentration of Codeine Phosphate in it is

mere 0.20% as compared to permissible limit to 2.5%. Hence, the drug comes under the Schedule H-1 of the Drugs and Cosmetics Rules 1940. Consequently, the stocking and sale of the drug do not attract the provisions of the Act and the Rules 1985 thereunder. However, it is a prescription drug and the same is to be dispensed on the prescription of a registered medical practitioner only. Having also referred to a prescription slip dated 28.05.2015 issued by Dr. Ashok Kumar Jain, who is a registered practitioner at Jabalpur and who has Post-Graduate Degree in the Medicines, to a patient by the name of Smt. Jyoti Adnani, he contends that the aforesaid doctor has prescribed the patient to have the drug as she suffers from cold and cough. Upon the aforesaid, it is submitted by him that no offence under the Act and the Rules 1985 committed by the applicant. It is also submitted by him that the applicant has filed M.Cr.C. No.8636/2015 under Section 482 of the Cr.P.C. in the High Court of Madhya Pradesh, Jabalpur for quahsment of the FIR of the present case on the aforesaid grounds, which is pending for consideration. It is pertinent to mention here that a bottle of the drug is also produced by him for inspection of this Court. Upon these submissions, a prayer is made for grant of bail.

Learned Government Advocate opposes the prayer on the ground that the total quantity of Codeine Phosphate in the seized bottles is 3720 mg. which is commercial quantity as per the notification S.O 1055(E) dated 19.10.2001. It is also submitted by him that the applicant is permanent resident of District Garhwa, province Jharkhand. In view whereof, if he is released

on bail, there is strong possibility that he may abscond during the trial of the case.

On due consideration of the facts and circumstances of the case, the submissions raised on behalf of the parties by their counsel and upon the perusal of the aforesaid circulars, notifications and the Schedule H-1, but without expressing any opinion on the merits of the case, I am of the view that it is a fit case for grant of bail. Hence, the application is allowed. It is ordered that applicant **Vinesh Kumar Yadav** be released on bail on his furnishing a personal bond in the sum of **Rs.75,000/- (rupees seventy five thousand only)** with one solvent surety of Katni district of the same amount to the satisfaction of the court concerned for his appearance on all such dates as may be fixed by it in this regard. He shall abide by the conditions enumerated in Section 437(3) of the Cr.P.C. In case of bail jump, the court concerned will have power to cancel the applicant's bail.

It is made clear that the trial Court shall not be influenced by any observations of this Court made in this order because it has not decided finally that the drug is not covered under the provisions of the Act and the Rules 1985.

Certified copy as per rules.

(RAJENDRA MAHAJAN)
V. JUDGE

ac/-