

(2011) 08 P&H CK 0061

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R.M. M-20589,20803,20407,19588, 19686, 8122, 16670, 17672, 18406, 19401,
12624, 7097, 12299 of 2011 (O and M)

Gurinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Aug. 29, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439
- Drugs and Cosmetics Rules, 1945 - Rule 65(4), 65(5)(3)
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 2, 21, 22, 25, 37
- Narcotic Drugs and Psychotropic Substances Rules, 1985 - Rule 65, 66, 67

Citation: (2011) 4 RCR(Criminal) 433

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

,,,,

Rakesh Kumar Jain, J.

I shall be disposing of 13 regular bail applications filed u/s 439 of the Code of Criminal Procedure, 1973 [for short" ,,,,

Cr.P.C.""]. The details of all the 13 cases are as under:-" ,,,,

1 & 2. CRM-M-20589-2011 titled as "Gurinder Singh v. the State of Punjab and CRM-M-20803-2011 titled as "Kashmiri Lal v. State of ,,,,

Punjab" arising out of FIRNo. 236 dated 24.12.2010, registered under Sections 22/25/61/85 of the Narcotic Drugs and Psychotropic Substances" ,,,,

Act, 1985 [for short ""NDPS Act""], Police Station Machhiwara, District Ludhiana." ,,,,

3. CRM-M-20407-2011 titled as "Parveen Kumar v. State of Punjab arising out of FIR No. 44 dated 17.05.2011, registered under Sections",,,,

22/25/61/85 of the NDPS Act, Police Station City Samana, District Patiala.",,,,

4. CRM-M-19588-2011 titled as "Sanjiv Kumar v. State of Punjab arising out of FIR No. 45 dated 17.05.2011, registered under Sections",,,,

22/25/61/85 of the NDPS Act, Police Station City Samana, District Patiala.",,,,

5. CRM-M-19686-2011 titled as "Rajinder Kumar v. State of Punjab arising out of FIR No. 47 dated 30.01.2011, registered under Sections",,,,

22/61/85 of the NDPS Act, Police Station City Sangrur, District Sangrur.",,,,

6. CRM-M-8122-2011 titled as "Rajesh Kumar v. State of Punjab arising out of FIR No. 42 dated 05.10.2010, registered under Sections",,,,

22/61/85 of the NDPS Act, Police Station Lakho Ke Behram, District Ferozepur.",,,,

7. CRM-M-16670-2011 titled as "Baljit Singh @ Sonu v. State of Punjab arising out of FIR No. 59 dated 11.03.2011, registered under Sections",,,,

21/22 of the NDPS Act, Police Station Bhargo Camp, District Jalandhar.",,,,

8 & 9. CRM-M-17672-2011 titled as "Vipan Kumar v. State of Punjab and CRM-M-18406-2011 titled as "Ramandeep Singh v. State of",,,,

Punjab" arising out of FIR No. 8 dated 12.01.2011, registered under Sections 22/61/85 of the NDPS Act, Police Station Raikot, District",,,,

Ludhiana.,,,,

10. CRM-M-19401-2011 titled as "Jaswinder Singh v. State of Punjab" arising out of FIR No. 19 dated 03.03.2011, registered under Sections",,,,

22/61/85 of the NDPS Act, Police Station Sadar Malout, District Sri Muktsar Sahib.",,,,

11. CRM-M-12624-2011 titled as "Mohan Singh v. State of Punjab" arising out of FIR No. 32 dated 21.02.2011, registered under Sections",,,,

22/61/85 of the NDPS Act, Police Station Division No. 7, Ludhiana, District Ludhiana.",,,,

12. CRM-M-7097-2011 titled as "Bhushan Kumar alias Bhusha v. State of Punjab" arising out of FIR No. 159 dated 27.11.2010, registered",,,,

under Sections 22/25/61/85 of the NDPS Act, Police Station Talwandi Sabo, District Bathinda.",,,,

13. CRM-M-12299-2011 titled as "Rajinder Singh v. State of Punjab" arising out of FIR No. 21 dated 08.02.2011, registered under Sections",,,,

21/61/85 of the NDPS Act at Police Station Division No. 7 (Vardhman), Ludhiana.",,,,

2. The aforesaid cases are being decided together by this common order because in all the cases the arguments raised by the respective advocates,,,,

are similar. The facts of each case in brief are being extracted hereasunder :-,,,,

1 & 2. CRM-M-20589-2011 & CRM-M-20803-2011.,,,,

3. The allegations contained in the FIR are that a Truck being driven by Gurinder Singh (petitioner in CRM-M-20589-2011) with Cleaner,,,,

Kashmiri Lal (petitioner in CRM-M-20803-2011) was apprehended and 300 bottles of Re-codex (containing 100 MLs each), 250 packets of" ,,,,

Momotil (containing 100 tablets each) total 25,000 tablets and 200 packets of Phenotil (containing 100 tablets each) total 20,000 tablets were" ,,,,

recovered without any license or permit. The samples were sent for chemical analysis by way of following five parcels :-,,,,

Parcel No. 1-100 tablets of white colour in packet labelled as Phenotil. Average weight 70/mg/Tab.,,,,

Parcel No. 2-100 tablets of white colour in packet labelled as Momotil. Average weight 66/mg/Tab.,,,,

Parcel Nos. 3,4 & 5. - Each parcel was containing one small sized plastic bottle labelled as RECODEX and containing 100 ml. of orange" ,,,,

coloured liquid material.,,,,

The report of the Chemical Examiner is as under:-,,,,

Ingredients present Average Quantity of,,,,

Ingredient in the parcel No.,,,,

1 2 3 4 5,,,,

Diphenoxylate 2.4mg/ 2.3mg/ - - -,,,,

hydrochloride tab tab,,,,

Atropine Sulphate 0.023 0.023mg- - -,,,,

mg/tab /tab,,,,

ChlorpheniramineMaleate- - 3.9mg/ 3.8mg/5ml3.7mg/,,,,

5ml 5ml.,,,,

Ingredients present,, "Average Quantity of Ingredient in

the parcel No.",,

,(i),(ii),(iii),(iv)

Diphenoxylate

hydrochloride",2.4mg/tab,2.3 mg/tab,-,-

,,,,

,,,,

Atropine

Sulphate","0.024

mg/tab",0.024mg/tab,-,-

Alprazolam,-,-,0.48mg/tab,-

Dextro-

propoxyphene

hydrochloride",-,-,-,"64.8mg/

capsule

The allegations contained in the FIR are that the petitioner was coming on foot from the footpath of Semnala holding one plastic bag in his right,,,,

hand and on seeing the police party, returned back in a frightened condition. On suspicion, he was overpowered and on search, 500 gms.",,,,

intoxicant powder and 84 Oxytocin injections were recovered. The samples were sent for chemical examination in the following parcels :-,,,,

Parcel No. 1-10 grams of brown coloured powder material mixed with yellow, blue and white coloured flakes.",,,,

Parcel No. 2 - One glass injection ampoule labelled as Oxytocin and containing one ml. of colourless liquid material.

The report of the Chemical Analyst is as under:-

Ingredients presentAverage Quantity of Ingredient in the

parcel No.

(i) (ii)

Alprazolam 0.27%- -

Oxyticin - 5.01 U./ml.

The petitioner, who is stated to be in custody since 03.03.2011, had applied for bail before the learned Court below which was dismissed on",,,,,

06.06.2011.,,,,,

11. CRM-M-12624-2011,,,,

The allegations contained in the FIR are that the petitioner was caught on a secret information that he is selling drugs without license. Recovery of,,,,

3600 tablets of Microlit, 1000 tablets of Momolit, 100 tablets of Phenotil, 500 tablets of Lomotil, 161 tablets of N-10, 4 bottles of Corex, 4",,,,,

bottles of Rexcof, 82 capsules of proxyona, 80 capsules of Parvonspas, 52 capsules of Spasmo Proxy and 61 capsules of Hnotak were",,,,,

recovered. Though the petitioner had produced evidence that he is a Chemist but he could not produce any bill of the recovered drugs. The,,,,

samples were sent for chemical examination in the following parcels :-,,,,

a) 20 loose tablets of white colour. Average wt. 75mg/tablet.,,,,,

b) 10 loose tablets of white colour. Average wt. 61mg/tablet.,,,,,

c) 10 loose tablets of white colour. Average wt. 70 mg/tablet.,,,,,

d) 10 loose tablets of white colour. Average wt. 62 mg/tablet.,,,,,

e) 10 tablets of white colour in a strip labelled as N-10. Average wt. 634mg/tablet.,,,,,

f) One plastic bottle labelled as Corex containing 100 ml. of liquid.,,,,,

g) One plastic bottle labelled as Rexcof containing 100 ml. of liquid.,,,,,

h) 10 capsules of Red-grey colour in strip labelled as Proxyvon.,,,,,

Average wt. 652Mg/capsule.,,,,,

i) 10 capsules of maroon colour in a strip labelled as Parvon Spas.,,,,,

Average wt. 630/mg./capsule.,,,,,

j) 10 capsules of blue colour in strip labelled as Spasmo Proxyvon.,,,,,

Average wt. 655/mg/capsule.,,,,,

k) 10 capsules of Red-black colour in a strip labelled as Hyn- Oteck-10.,,,,,

Average wt. 228mg/capsule.,,,,,

The report of the Chemical Any list is as under:-,,,,

Ingredients present Average Quantity of Ingredient in the,,,,

parcel No.,,,,

TABLE - I,,,

a b c d e,,,

Diphenoxylate2.4 2.3 2.3 2.4,,,

hydrochloridemg/tab mg/tab mg/tab mg/tab,,,

Atropine 0.020mg0.019mg0.019mg0.020mg-,,,

Sulphate /tab /tab /tab /tab,,,

Nitrazepam - - - 9.6 mg/,,,

capsule,,,

Ingredients present Average Quantity of Ingredient in the,,,

parcel No.,,,,

TABLE-2,,,

f g h i j k,,,

Codeine Phosphate 9.9 9.8 - - -,,,

ms/5m,,,

mg/5m,,,

1,,,

ChlorpheniramineMaleate3.9 3.8 - - -,,,

mg/5mlmg/5m,,,

l,,,

Dextro-pro- - - 99.2 - 99.2,,,

poxypheneNapsylatc mg/cap mg/cap,,,

Dextro-propoxyphent - - - 64.7 -,,,

hydrochloride mg/cap,,,

Acetaminophen 399.2 398.5m399.2,,,

Paracetamol mg/capg/cap m,g/cap",,,

Dicyclomine - - - 9.8 9.9,,,

hydrochloride mg/capmg/cap,,,

Nitrazepam 9.8,,,,

mg/cap,,,,

The petitioner, who is stated to be in custody since 21.02.2011, had applied for bail before the learned Court below which was dismissed on",,,,,

15.04.2011 on the ground that he could not produce the bill of the recovered drugs.,,,,

12. CRM-M-7097-2011,,,,

The allegations contained in the FIR are that the petitioner was seen coming from the side of village Singhpura carrying one polythene bag in his,,,,

right hand. On seeing the police party, he tried to run away but on suspicion he was apprehended at the spot. On search, 300 bottles of Lomotil",,,,,

tablets (each containing 100 tablets) total 30000 tablets were recovered. The sample was sent for chemical analysis in which Diphenoxylate,,,,

Hydrochloride was found to the extent of 2.4mg/tablet and Atropine Sulphate was found to the extent of 0.024mg/tablet.,,,,

The petitioner, who is stated to be in custody since 27.11.2010, had applied for bail before the learned Court below which was dismissed on",,,,,

14.02.2011 on the ground that the petitioner was found in possession of the contraband of the commercial quantity.,,,,

13. CRM-M-12299-2011,,,,

The allegations contained in the FIR are that secret information was given that Rajinder Singh (petitioner) along with other co-accused Paramjit,,,,

Singh, Jagjit Singh and Harsimran Singh were selling intoxicant without any license under the cover of medical store. Thereafter, a raid was",,,,,

conducted at the S.P. Medical Store and the petitioner was apprehended with a bag from which 70 injections of AVL, 36 injections of Curapose",,,,,

84 injections of Naorbasic, 320 capsules of Proxyvon Spasmos were recovered. The samples were taken and sent for chemical analysis by way",,,,,

of following two parcels :-,,,,

Parcel No, 1(a) 10 tablets of white colour in a strip labelled as Nitramas-10.",,,,,

Average wt. 685mg/tablet.,,,,

(b) 10 capsules of maroon colour in a strip labelled as Parvon Spas.,,,,

Average wt. 633mg/capsule.,,,,

Parcel No. 2 (a) One glass injection ampoule labelled as Norgesic, containing 2ml. of liquid." ,,,,

(b) One glass injection vial labelled as AVL containing 10 ml. of liquid.,,,,

(c) 8 capsules of blue colour in a strip labelled as Spasmo Proxyvon.,,,,

Average wt. 635Mg/capsule.,,,,

(d) One glass injection vial labelled as Curapose containing 10 mi. Of liquid.,,,,

The report of the Chemical Anylist is as under:- ,,,,

Ingredients present Average Quantity of Ingredient in the ,,,,

parcel No.,,,,

I 2 ,,,,

a b a b c d ,,,,

Nitrazepam 9.8 - - - - ,,,,

mg/tab ,,,,

Dextro-pro-poxyphene 64.5 ,,,,

hydra-chloride mg/cap ,,,,

Dextro- - - - 99.2 - ,,,,

propoxyphentNapsylate ,,,,

mg/cap ,,,,

Paracetamol - 398.5 - - 399.2 - ,,,,

mg/cap ,,,,

mg/cap ,,,,

Acetaminophene ,,,,

Dicyclomine- - 9.8 - - 9.9 - ,,,,

hydrochloride ,,,,

mg/cap mg/cap ,,,,

Buprenor-phine - - 0.29 - - ,,,,

hydrochloride mg/ml ,,,,

PheniramineMaleate - - - 22.5 - - ,,,,

mg/ml.,,,,

Diazepam - - - - 4.8mg/,,,

1.,,,,

6. A common stand of the petitioner(s) in all the aforesaid petitions is that in the notification No. S.O.826(E) dated 14.11.1985, Codeine is at",,,,

entry No. 35, Diphenoxylate is at entry No. 58 and Dextropropoxyphene is at entry No. 87 in which exemption has been provided up to 2.5% in",,,,

Codeine, 2.5mg in Diphenoxylate and 135mg in Dextropropoxyphene. It is submitted that in all the cases, pure content of the narcotic is less than",,,,

the permissible limit but the learned Courts below have dismissed the bail applications on the basis of a notification No. S.O.2941(E) dated",,,,

18.11.2009 by which notification No. S.O.1055(E) dated 19.10.2001 has been amended and the entire weight of the drugs recovered is taken",,,,

into consideration instead of pure drug content. It is further submitted that as per the table prepared in terms of Sections 2(vii-a) and 2(xxiii-a) of",,,,

the Act, 10 grams of Codeine is small quantity and 1 Kg. is commercial quantity (entry No. 28), 2 grams of Diphenoxylate is small quantity and 50",,,,

grams is the commercial quantity (entry No. 44), 20 grams of Dextropropoxyphene, Nitrazepam and Diazepam is small quantity and 500 grams is",,,,

the commercial quantity (entry Nos. 33, 194 & 221 respectively), 1 gram of Buprenorphine is small quantity and 20 grams is the commercial",,,,

quantity (entry No. 169) and 5 grams of Alprazolam is small quantity and 100 grams is the commercial quantity (entry No. 178). It is further",,,,

submitted that the punishment in relation to the contravention of manufactured drugs, preparations and psychotropic substances under Sections 21",,,,

and 22 of the Act in case of small quantity is 6 months R.I. with Rs. 10,000/-fine or both, in the case of noncommercial quantity, i.e. lesser than the",,,,

commercial quantity but greater than the small quantity, it is R.I. for 10 years and fine up to Rs. 1,00,000/- or both and in the case of commercial",,,,

quantity, it should not be less than 10 years R.I. which may extend up to 20 years and the fine shall not be less than Rs. 1,00,000/- which could go",,,,

upto Rs. 2,00,000/-. The Court has also got the power to enhance the amount of fine beyond Rs. 2,00,000/- for the reasons to be recorded.",,,,

7. On the other hand, the argument raised by the learned State Counsel is that after the amendment dated 18.11.2009 by the Ministry of Finance",,,,,

(Department of Revenue), the entire mixture is to be seen and not just the pure drug content." ,,,,

8. Learned counsel for the petitioner(s) have relied upon following decision of this Court :-,,,,

1. Criminal Revision No. 848 of 2004 titled as "Bal Kishan alias Diwan Chand v. State of Punjab" decided on 30.05.2011.,,,,

2. Criminal Revision No. 274 of 2004 titled as "Sukhdev Singh v. State of Punjab" decided on 25.05.2011.,,,,

3. Criminal Revision No. 281 of 2004 titled as "Kismat Singh v. State of Punjab" decided on 25.05.2011.,,,,

4. Criminal Revision No. 359 of 2004 titled as "Gurmit Singh v. State of Punjab" decided on 25.05.2011.,,,,

5. Criminal Revision No. 592 of 2004 titled as ""Kulwant Singh v. State of Punjab" decided on 24.05.2011." ,,,,

6. Criminal Revision No. 765 of 2003 titled as "Ramesh Kumar v. State of Punjab" decided on 30.05.2011.,,,,

7. Criminal Revision No. 975 of 2004 titled as "Gurmit Singh v. State of Punjab" decided on 25.05.2011.,,,,

8. Criminal Revision No. 1603 of 2004 titled as "Pradeep Singh v. State of Punjab" decided on 30.05.2011.,,,,

9. Criminal Revision No. 1844 of 2006 titled as "Kashmir Singh v. State of Punjab" decided on 23.05.2011.,,,,

10. Criminal Misc. No. M-24461 of 2003 titled as "Krishan Kumar and others v. State of Punjab" decided on 26.05.2011.,,,,

11. Criminal Misc. No. M-39939 of 1999 titled as "Vinod Kumar v. State of Punjab" decided on 26.05.2011.,,,,

12. Criminal Misc No. M-42734 of 2000 titled as "Tejinder Singh alias Montu v. State of Punjab" decided on 26.05.2011.,,,,

13. Criminal Misc. No. M-58535 of 2006 titled as "Mukesh Kumar and others v. State of Punjab" decided on 30.05.2011.,,,,

14. Criminal Misc. No. M-81024 of 2006 titled as "Major Singh v. State of Punjab" decided on 24.05.2011.,,,,

15. Criminal Revision No. 96 of 2004 titled as "Ajaib Singh v. State of Punjab" decided on 24.05.2011.,,,,

9. Besides the above, the following judgments have also been cited by the learned counsel for the petitioner(s):-" ,,,,

1. Rajeev Kumar v. State of Punjab, 1997 (4) R.C.R. (Cri) 846;" ,,,,

2. Deep Kumar v. State of Punjab, 1997 (2) R. C.R. (Cri) 417;" ,,,,

3. Leela Ram v. State of Punjab, 2002 (3) R.C.R. (Cri) 805;" ,,,,

4. Gurdarshan Pal v. State of Punjab, 2003 (2) R.C.R. (Cri) 593;" ,,,,

5. Mohinder Singh v. State of Punjab, 2001 (1) R.C.R. (Cri) 503;" ,,,,

6. Baljit Singh v. State of Punjab, 2002 (4) R.C.R. (Cri) 664;" ,,,,

7. Mohmed Salim v. State of Haryana, 2008 (2) R.C.R. (Cri) 128; and" ,,,,

8. Sewak Singh v. State of Punjab, 1998 (4) R.C.R. (Cri) 832." ,,,,

10. In reply, the learned State Counsel has relied upon the following judgments :-" ,,,,

1. Crl. Misc. No. M-35827 of 2010 titled as "Amarjit Singh alias Goldy v. State of Punjab and another" decided on 26.05.2011.,,,,

2. Crl. Appeal No. 512-DB of 2006 titled as "Gurmail Singh alias Gela v. The State of Punjab" decided on 25.09.2009.,,,,

3. Shaji v. Kerala State, 2004 (4) R.C.R. (Criminal) 643." ,,,,

4. Crl. Misc. No. M-14115 of 2009 titled as "Kashmir Chandson of Mathura Doss and another v. Central Bureau of Investigation" decided on ,,,,

27.04.2010.,,,,

11. I have learned counsel for the parties and have perused the record with their able assistance.,,,,

12. The sum and substance of the arguments raised by learned counsel for the petitioner(s) is that in case of seizer of narcotic substance, the Court" ,,,,

is to rely upon the report of the Chemical Examiner in order to find out the pure drug content per dosage and if it is found to be below the ,,,,

exempted limit, then the petitioner(s) are entitled to bail as it would not fall within the definition of commercial quantity which could attract the rigour" ,,,,

of Section 37 of the Act.,,,,

13. In order to appreciate the respective submissions made by learned counsel for the parties, it would be appropriate to refer to the amendment" ,,,,

dated 18.11.2009. Earlier the notification No. S.O.1055 (E) dated 19.10.2001 was issued in terms of Clause (vii-a) and (xxiii-a) of Section 2 of,,,,

the Act by which small quantity and commercial quantity of each of the substance was stipulated. The said notification did not introduce a new,,,,

psychotropic substance other than those mentioned in the Schedule to the Act as the intention of the notification was only to prescribe small and,,,,

commercial quantity of psychotropic substances by maintaining its statutory definition. However, by notification No. S.O.2941(E) dated" ,,,,

18.11.2009, the amendment was brought in the notification dated 19.10.2001 and in the Table at the end after Note 3, the following Note was" ,,,,

added :-,,,,

(4) The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture,,,,

or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and" ,,,,

salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug" ,,,,

content.,,,,

13A. In Amarjit Singh alias Goldy's case (supra), the accused was found in possession of 1 Kg. 250 grams of Mandrax Diphenoxylate which is" ,,,,

mentioned at Sr. No. 44 of the Table appended to the Act inserted as a consequence of Central Act No. 9 of 2001 in which small quantity is 2,,,,

grams and the commercial quantity is 50 grams or above. The accused sought bail on the ground that as per Chemical Examination report, the" ,,,,

percentage of Diphenoxylate was 1.493% which falls within the definition of non-commercial quantity. In support of his case, the accused had" ,,,,

relied upon 3 decisions of the Supreme Court in the case of E. Micheal Raj Vs. Intelligence Officer, Narcotic Control Bureau, , Ouseph v. State of" ,,,,

Kerala, 2006 (2) R.C.R.(Criminal) 127 : (2004) 4 SCC 446 and Samiullaha v. Superintendent, Narcotic Central Bureau, 2009 (1) R.C.R. (Cri)" ,,,,

40 : 2008 (6) R.A.J. 439 : 2008 (16) SCC 471. It was also tried to be argued that the notification dated 18.11.2009 has the effect of nullifying the,,,,

judgments of the Supreme Court rendered in E. Micheal Raj's case (supra) and other cases referred to above, but this Court, while deciding" ,,,,

Amarjit Singh alias Goldy's case (supra) upheld the notification and observed that the notification is prospective in nature and could be used to,,,,
alter or neutralize the judgment.,,,,

14. Similarly, in Gurmail Singh alias Gela's case (supra), the issue was as to whether the total weight of the recovered opium (10 Kgs.) was to be",,,,
considered or the pure drug content (5.1 %). It was argued that after taking into consideration the percentage of purity content, the weight of the",,,,
narcotic would be around 500 grams which is less than the commercial quantity. However, the Division Bench of this Court has held that the entire",,,,
mixture is to be seen and not the pure drug content. It was also observed that ""notorious criminals add neutral material in the opium/heroin with a",,,,
view to increase profit, the criminals do not mention purity of morphine/heroin content and other chemicals in the contraband. If by adding neutral",,,,
material, criminals, in order to satisfy their greed, can increase the bulk to get profit, then why they should not be punished by treating the neutral",,,,
material as part of the contraband recovered""." ,,,,

15. In Shaji's case (supra), the question was whether the natural or pure ingredient of Buprenorphine or the entire content of the preparation is to",,,,
be seen. It was observed that the definition of psychotropic substance takes in not only the substance in its pure and natural form, but the entire",,,,
preparation or solution containing the psychotropic substance as well. It was further observed that Section 2(xxiii) defines ""psychotropic",,,,
substance"" which includes preparation of substance and the term ""preparation"" is defined u/s 2(xx) of the Act. It was observed that Buprenorphine",,,,
is at item No. 92 of the Schedule to the Act and according to the accused, each of the ampules contained 0.3 mg. of Buprenorphine is dissolved in",,,,
water. It was held that it is the entire solution of Buprenorphine which is to be taken into consideration being ""preparation of psychotropic",,,,
substance"" and not only the drug content." ,,,,

16. In the decisions of this Court relied upon by learned counsel for the petitioner(s) in cases CRR-848-2004, CRR-274-2004, CRR-359-2004," ,,,,
CRR-592-2004, CRR-765-2003, CRR-975-2004, CRR-1603-2004, CRM-M-24461-2003, CRM-M- 39939-1999, CRM-58535-2006 &" ,,,,

CRM-M-81024-2006 (supra), the basic issue was that if a person is not having valid license to stock and sell the drugs containing psychotropic",,,, substance, then he would commit an offence under the provisions of the Drugs & Cosmetics Act, 1940 [for short ""D&C Act""] and not an offence",,,, under the Act. In this regard, it would be pertinent to mention here that in Kashmir Chand son of Mathura Dass and another"s case (supra), this",,,, Court has dealt with in detail with various provisions of both the Acts and has pleased to hold that ""now the question arises where a person has a",,,, valid license under the D&C Act, 1940 and the Rules framed thereunder would, merely because he is holding a license, be immune from the",,,, applicability of the provisions of the NDPS Act, 1985 and the Rules framed thereunder. It is not disputed by the petitioners that the Buprenor-",,,, phine is a psychotropic substance. What has been contended by them is that since the petitioners possessed a valid license under the D&C Act,",,, 1940 and the Rules framed thereunder on the date when the raid was conducted, they were entitled to possess the same and mere possession of",,,, the said psychotropic substance would not amount to an offence under the NDPS Act. Section 80 of the NDPS Act, 1985 provides that the",,,, provisions of the Act and the Rules made thereunder are in addition to and not in derogation of the D&C Act, 1940 or the Rules made thereunder.",,, Even if it is said that obtaining of a license under the D&C Act and the Rules framed thereunder provides protection from the rigors of the",,,, applicability of the NDPS Act as provided under Rules 65 to 67 of the NDPS Rules, 1985 but still for claiming protection under the D&C Act,",,, 1940 and the Rules framed thereunder, the requirement of the license and the conditions imposed under the provisions of the D&C Act and the",,,, Rules framed thereunder have to be complied with. The umbrella of protection under the D&C Act and the Rules framed thereunder vanishes, the",,,, moment the provisions contained under the said Act and the Rules are not complied with or infringed or violated by the holder of the license.,,,, Merely holding a license under the D&C Act and the Rules framed thereunder does not provide an immunity from the rigors of the applicability of",,,, the NDPS Act and the Rules framed thereunder. The conditions of license have to be complied with. The petitioners have violated Rule 65(4) of",,,,

the D&C Rules, 1945 as under this Rule, record of purchase of a drug intended for sale or sold by retail, is mandated to be maintained by the",,,,

licensee and such record has to show the particulars, as have been mentioned in the said Rule. The licensee is mandated to maintain the purchase",,,,

bills including cash or credit memos which the petitioners have failed to maintain. The petitioners have also violated the provisions of Section 65(5),,,,

(3) of the D&C Rules, 1945. By violating the conditions of the license, the protection provided under the D&C Act, 1940 and the Rules framed",,,,

thereunder vanishes and the licensee is open to the rigors of the NDPS Act and the Rules framed thereunder. Counsel for the petitioners has very",,,,

fairly stated that the petitioners do not possess any purchase bills nor do they have any explanation as to how these drugs came in their",,,,

possession". Thus, it was finally observed that ""in view of the above observations of the Hon'ble Supreme Court since the petitioners have violated",,,,

the terms of license issued to them under the D&C Act, 1940 and the Rules framed thereunder, the provisions contained under the NDPS Act",,,,

would apply and if an offence is committed by them in violation of the provisions of the NDPS Act and the Rules framed thereunder, the petitioners",,,,

are liable to be prosecuted for the said offences. It cannot be disputed that if the protection as provided under Rules 65 to 67 of the NDPS Rules",,,,

to the license holders under the D&C Act, 1940 and the Rules framed thereunder goes, the provisions of the NDPS Act, 1985 and the Rules",,,,

would take over in toto and for any act done in violation of the provisions of the NDPS Act, 1985 and the Rules framed thereunder, the offence",,,,

would be made out, which in the present case is clearly made out as the petitioners were found in possession of 19270, 2ml ampoules of Bup-",,,,

Norphine batch No. 1451 manufactured by M/s Global Labs, Mohali, Punjab, as the petitioners failed to produce any bill/invoice in support of the",,,,

purchase of the above-said injections"". ",,,,

17. In CRR-281-2004 and CRM-M-96-2004 (supra), this Court has held that Buprenorphine Hydrochloride is not a psychotropic substance,",,,

whereas in Kashmir Chand son of Mathura Dass and another's case (supra) it has been held that ""a perusal of the above provisions and especially",,,,

Section 2(xxiii) of the Act with reference to the Schedule attached to the Act leaves no manner of doubt that Bup-norphine is a psychotropic substance".",

18. In CRR-1844-2006, CRM-M-42734-2000, Rajeev Kumar's case (supra), Deep Kumar's case (supra) and Sewak Singh's case (supra),",

the view has been taken that the pure drug content is to be seen which has been found less than the prescribed limit, whereas after coming into",

force of the notification dated 18.11.2009, the pure drug content has not to be seen but the entire mixture or solution of the drug is to be weighed",

for the purpose of deciding the weight by applying notification dated 19.10.2001 by which small and commercial quantity has been determined.,

19. Insofar as the judgments rendered in Leela Ram's case (supra), Gurdarhan Pal's case (supra), Mohinder Singh's case (supra) Baljit Singh's",

case (supra) and Mohamed Salim's case (supra) are concerned, these decisions are not of any help to the petitioners(s) as in none of these cases,",

the question involved here-in-above has been answered.,

20. In view of the above, I hold that the notification dated 18.11.2009 is applicable prospectively and the entire drug content, solution or mixture",

is to be seen and not only the pure drug content of the narcotic/psychotropic substance and if it is found to be more than commercial quantity, then",

the rigour of Section 37 of the Act would apply.,

Now I would take up all the cases individually to order as to whether they are entitled to bail or not.,

1&2. CRM-M-20589-2011 & CRM-M-20803-2011.,

21. As per the table provided under clauses (vii-a) and (xxiii-a) of Section 2 of the Act [for short "Table"], entry No. 44 depicts Diphenoxylate",

which if found upto 2 grams falls in the category of small quantity and if found more than 50 grams and above, it falls within the category of",

commercial quantity. In this case, 25000 tablets of Momotil and 20000 tablets of Phenotil were recovered and the average weight of those tablets",

was 66mg/tab and 70mg/tab respectively in which Diphenoxylate Hydrochloride was found to the extent of 2.4mg/tab and 2.3mg/tab respectively.,

Before the application of the notification dated 18.11.2009, the drug content per tablet was to be seen and if it was found to be less than",

2.5mg/tab, it would fall within the exempted limit in terms of entry No. 58 in the notification dated 14.11.1985, but after issuance of the notification",,,,,

dated 18.11.2009, since the entire mixture or solution of the drug content is to be considered which, in this case, has been found to be 1400 grams",,,,,

and 1650 grams respectively, which is much more than the commercial quantity of 50 grams. In the case of Narcotics Control Bureau v. Kishan",,,,,

Lal and others, 1991(1) R.C.R. (Cri) 338, it has been held by the Supreme Court that for grant of bail to the accused, Section 37 of the Act",,,,,

would apply and not Section 439 of the Cr.P.C. and in case of inconsistency between Section 439 Cr.P.C. and Section 37 of the Act, Section 37",,,,,

of the Act would prevail. In Union of India v. Mehboob Alam, AIR 2004 (SC) 3020, it has been held by the Supreme Court that though the Court",,,,,

has power to grant bail u/s 439 Cr.P.C. but the same should be subjected to the conditions spelt out in Section 37 of the Act.,,,,,

22. Hence, keeping in view the facts and circumstances of these cases and also the recovery of commercial quantity of psychotropic substance,",,,,

but without making any observation on the merits, I do not find these cases to be fit for grant of bail and hence, the present petitions are hereby",,,,,

dismissed.,,,,,

3. CRM-M-20407-2011,,,,

In this case, the recovery is of 7 Kgs. 980 grams white powder in which Dextropropoxyphene Hydrochloride was found to the extent of 3.945%",,,,,

and neutral content of Paracetamol was found to the extent of 64.67%. The content of Dextropropoxyphene Hydrochloride comes to 315.60,,,,

grams in the 7 Kgs. 980 grams powder. As per entry No. 33 in the Table, 20 grams of Dextropropoxyphene falls within the small quantity and",,,,,

500 grams and above falls within the commercial quantity. However, in terms of the notification dated 18.11.2009, since the entire mixture or",,,,,

solution of the drug content is to be considered which, in this case, has been found to be 7 Kgs. 980 grams, which is much more than the",,,,,

commercial quantity of 500 grams.,,,,,

Hence, keeping in view the facts circumstances of this case and also the recovery of commercial quantity of psychotropic substance, but without",,,,,

making any observation on the merits, I do not find it to be a fit case for grant of bail and hence, the present petition is hereby dismissed." ,,,,

4. CRM-M-19588-2011 ,,,,

In this case., the recovery is of 2 Kg. white powder in which Dextropropoxyphene Hydrochloride was found to the extent of 3.383% and neutral" ,,,,

content was of Paracetamol to the extent of 62.46%. The content of Dextropropoxyphene Hydrochloride comes to 67.66 grams in the 2 Kg. ,,,,

powder. As per entry No. 33 in the Table, 20 grams of Dextropropoxyphene falls within the small quantity and 500 grams and above falls within" ,,,,

the commercial quantity. However, in terms of the notification dated 18.11.2009, since the entire mixture or solution of the drug content is to be" ,,,,

considered which, in this case, has been found to be 2 Kg. which is much more than the commercial quantity of 500 grams." ,,,,

Hence, keeping in view the facts circumstances of this case and also the recovery of commercial quantity of psychotropic substance, but without" ,,,,

making any observation on the merits, I do not find it to be a fit case for grant of bail and hence, the present petition is hereby dismissed." ,,,,

5. CRM-M-19686-2011 ,,,,

In this case, the recovery is of 500 grams white coloured power in which Alprazolam was found to the extent of 24.68% (123.40 grams in 500" ,,,,

grams powder. As per entry No. 178 in the Table, 5 grams of Alprazolam falls within the small quantity and 100 grams and above falls within the" ,,,,

commercial quantity. However, in terms of the notification dated 18.11.2009, since the entire mixture or solution of the drug content is to be" ,,,,

considered which, in this case, has been found to be 500 grams, which is much more than the commercial quantity of 100 grams." ,,,,

Hence, keeping in view the facts circumstances of this case and also the recovery of commercial quantity of psychotropic substance, but without" ,,,,

making any observation on the merits, I do not find it to be a fit case for grant of bail and hence, the present petition is hereby dismissed." ,,,,

6. CRM-M-8122-2011 ,,,,

In this case, the recovery is of 20000 tablets of Phenotil (68mg/tab, total 1360 grams) and 10000 tablets of Microlit (76mg/tab, total 760 grams)" ,,,,

in which Diphenoxylate Hydrochloride was found to the extent of 2.4mg/tab and 2.3mg/tab respectively which, in total, comes to 48 grams and 23" ,,,,

grams respectively. 420 tablets of Alprakin (154mg/tab, total 64.68 grams) containing Alprazolam to the extent of 0.48mg/tab and 400 capsules of" ,,,,

Parvon Spas, (total 254 grams) containing Diphenoxylate Hydrochloride to the extent of 64.8mg/capsule were also recovered. As per entry No." ,,,,

44 in the Table, 2 grams of Diphenoxylate falls within the small quantity and 50 grams and above falls within the commercial quantity and/as per" ,,,,

entry No. 178,5 grams of Alprazolam falls within the small quantity and 50 grams and 100 grams and above falls within the commercial quantity." ,,,,

However, in terms of the notification dated 18.11:2009, since the entire mixture or solution of the drug content is to be considered which, in this" ,,,,

case, has been found to be 2439 grams which is much more than the commercial quantity." ,,,,

Hence, keeping in view the facts circumstances of this case and also the recovery of commercial quantity of psychotropic substance, but without" ,,,,

making any observation on the merits, I do not find it to be a fit case for grant of bail and hence, the present petition is hereby dismissed." ,,,,

7. CRM-M-16670-2011 ,,,,

In this case, the recovery is of 5000 tablets of Momolit (total 325 grams) which contained Diphenoxylate to the extent of 2.39mg/tab and 300" ,,,,

injections of Buprenorphine (total 0.172 grams) which contained Buprenorphine to the extent of 0.287 mg/ml ,,,,

However, in terms of the notification dated 18.11.2009, since the entire mixture or solution of the drug content is to be considered, therefore," ,,,,

keeping in view the facts circumstances of this case and also the recovery of quantity of psychotropic substance, but without making any" ,,,,

observation on the merits, I do not find it to be a fit case for grant of bail and hence, the present petition is hereby dismissed." ,,,,

8 & 9. CRM-M-17672-2011 & CRM-M-18406-2011 ,,,,

In these two cases, the recovery is of 88000 tablets of Phenotil (98mg/tab, total 8624 grams) containing Diphenoxylate Hydrochloride to the" ,,,,

extent of 2.4mg/tab, 3000 tablets of Nitramas (710mg/tab, total 2130 grams) containing Nitrazepam to the extent of 9.8mg/tab, 1200 tablets of" ,,,,

Anxinil (12mg/tab, total 14.4 grams) containing Alprazolam to the extent of 0.48mg/tab and 720 capsules of Spasmo Proxyvon (645mh/capsule,",,,,

total 464.4 grams). As per entry No. 44 in the table, 2 grams of Diphenoxylate falls within the small quantity and 50 grams and above falls within",,,,,

the commercial quantity and as per entry No. 178,5 grams of Alprazolam falls within the small quantity and 100 grams and above falls within the",,,,,

commercial quantity. However, in terms of the notification dated 18.11.2009, since the entire mixture or solution of the drug content is to be",,,,,

considered which, in this case, has been found to be 11233 grams which is much more than the commercial quantity.",,,,,

Hence, keeping in view the facts circumstances of this case and also the recovery of commercial quantity of psychotropic substance, but without",,,,,

making any observation on the merits, I do not find these cases it be fit for grant of bail and hence, the present petitions are hereby dismissed.",,,,,

10.CRM-M-19401-2011,,,,

In this case, the recovery is of 500 grams of intoxicant containing Alprazolam to the extent of 0.27% and 84 Oxytocin injections containing",,,,,

Oxyticin to the extent of 5.01 u./ml. As per entry No. 178 in the table, 5 grams of Alprazolam falls within the small quantity and 100 grams and",,,,,

above falls within the commercial quantity. However, in terms of the notification dated 18.11.2009, since the entire mixture or solution of the drug",,,,,

content is to be considered which, in this case, has been found to be 500 grams which is much more than the commercial quantity.",,,,,

Hence, keeping in view the facts circumstances of this case and also the recovery of commercial quantity of psychotropic substance, but without",,,,,

making any observation on the merits, I do not find it to be a fit case for grant of bail and hence, the present petition is hereby dismissed.",,,,,

11. CRM-M-12624-2011,,,,

In this case, a huge recovery has been effected of various drug contents from the petitioner who is allegedly a Chemist but could not produce any",,,,,

bill/document. The petitioner cannot take the advantage of D&C Act in view of the decision rendered by this Court in Kashmir Chand son of",,,,,

Mathura Dass and another's case (supra) and also that Diphenoxylate is within the permissible limit, i.e. 2.5mg/tab, as the entire mixture or solution",,,,,

of the drug content is to be seen and not the pure drug content in terms of the notification dated 18.11.2009.,,,,

Hence, keeping in view the facts circumstances of this case and also the recovery of the quantity of psychotropic substance, but without making",,,,

any observation on the merits, I do not find it to be a fit case for grant of bail and hence, the present petition is hereby dismissed.",,,

12.CRM-M-7097-2011,,,

In this case, the recovery is of 30000 tablets of Lomotil (62mg/tab, total 1860 grams) in which Diphenoxylate Hydrochloride was found to the",,,,

extent of 2.4mg/tab. Since the recovery of entire drug contents falls within the commercial quantity, therefore, the rigour of Section 37 of the Act",,,,

would apply.,,,,

Hence, keeping in view the facts circumstances of this case and also the recovery of the commercial quantity of psychotropic substance, but",,,,

without making any observation on the merits, I do not find it to be a fit case for grant of bail and hence, the present petition is hereby dismissed.",,,

13.CRM-M-12299-2011,,,

In this case, the recovery is of various drugs for which no bill/document has been produced. Therefore, in view of the decision rendered by this",,,,

Court in Kashmir Chand son of Mathura Dass and another"s case (supra) protection of D&C Act is not available to the petitioner.,,,,

23. Hence, keeping in view the facts circumstances of this case and also the recovery of the commercial quantity of psychotropic substance, but",,,,

without making any observation on the merits, I do not find it to be a fit case for grant of bail and hence, the present petition is hereby dismissed.",,,

Thus, all the 13 cases are hereby dismissed as indicated herein- above.",,,

A photocopy of this order be placed on the files of other connected cases.,,,,