
(2012) 05 GAU CK 0009

Gauhati High Court

Case No: Bail Application No. 885 and 886 of 2012

Sahab Uddin (MD.) and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: May 25, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439
- Evidence Act, 1872 - Section 105
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 2(xi), 2(xi)(a), 2(xi)(b), 2(xiv), 20(b)
- Penal Code, 1860 (IPC) - Section 420, 468

Citation: (2012) 3 GLT 440

Hon'ble Judges: C.R. Sharma, J

Bench: Single Bench

Advocate: Milan Mukherjee, Mr. B.N. Mazumdar, Mr. Sankar Lodh, Mr. R.J. Das and Mr. S. Chatterjee, for the Appellant; Z. Kamar, PP. and Mr. B. S. Sinha, Addl.PP., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C. R. Sarma, J.

By the above mentioned bail applications filed u/s 439 CrPC, read with Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, "the NDPS Act"), the petitioners, namely, Md. Sahab Uddin and Shri Bishu Das (Bail Application No. 885/2012), who have been detained in custody, in connection with Golakganj P.S. Case No.63/2012, u/s 468/420 IPC, read with Sections 20(b)/22 of the NDPS Act. have prayed for releasing them on bail. Similarly, the petitioners, namely, Shri Bhupendar Singh and Shri Indrapal Singh (Bail Application No. 886/ 2012), who have been detained in custody, have prayed for releasing them on bail in connection with

Golakganj P.S. Case No. 54/ 2012, under Sections 20(b)/22 of the NDPS Act. I have heard Mr. M. Mukerjee, Mr. B.N. Mazudmar and Mr. S. Lodh, learned counsel, appearing for the petitioners in both the bail applications.

I have also heard Mr. Z. Kamar, learned Public Prosecutor, Assam, and Mr. B.S. Sinha, learned Addl. Public Prosecutor, Assam, appearing for the State.

2. As the both the cases are based on similar facts and circumstances, involving the same question of law, for the sake of convenience and brevity, with the consent of the learned counsel, appearing for both the parties, who have been heard together, I propose to dispose of both the bail applications, by this common order.

3. Brief Facts of BA No. 885/2012

(i) On 16.02.2012, at about 8-30 p.m., relying on a secret information, police intercepted a truck bearing registration No. HR-61-A6641 at Chgolia, Boxirhat, on the National Highway 31 and the vehicle, alongwith its driver Md. Sahab Uddin and Kalashi Shri Dishu Das (petitioners in B. A. No. 885/2012), was taken to the Golakganj Police Station. Due to darkness, police could not conduct search in respect of the said vehicle and as such kept the same in the Golakganj Police Station, under proper guards and detained the petitioners for interrogation. On the next day i.e., on 17.02.2012, the vehicle was thoroughly searched in presence of the Deputy Superintendent of Police (HQ),

Dhubri, Circle inspector of Golakganj and local witnesses.

(ii) During search, police recovered 347 cartoons, each cartoon containing 100 bottles of 100 ml Phensedyl cough syrup and 102 cartoons, each cartoon containing 100 bottles of 100ml Recodex cough syrup, which were kept, concealed with household articles, in the said truck. As per preliminary, enquiry made by police, the said items were found to have contained codeine, which is a narcotic drug. The driver of the vehicle could not produce any valid document in support of carrying the said contraband substances and the possession thereof. Accordingly, police seized the articles as per seizure list and the petitioners were produced before the learned Addl. CJM, Dhubri, on 18.2.2012 and since then they are in judicial custody.

4. Brief Facts of BA No. 886/2012

(i) On 12.02.2012, on the basis of a secret information, regarding carrying of illegal articles in a truck bearing registration No. JK-02-AJ-1251, at Chgoli, Boxirhat police intercepted the said vehicle alongwith its driver, Shri Indrapal Singh and owner, Shri Bhupendar Singh (both are the petitioners in B.A. No. 886/2012) and took them to Golakganj Police Station. Due to darkness, police could not conduct search in respect of the said vehicle, on the same night and as such kept the said vehicle in the Golakganj Police Station, under proper guard. On 13.02.2012, the said vehicle was thoroughly searched in presence of the Deputy Superintendent of Police (HQ), Dhubri, the Circle Inspector of Golakganj, the Officer-in-Charge of Golakganj Police

Station and some local people.

(ii) During the search, police recovered 10,000 bottles of Recodex cough syrup and 24,450 bottles of Phensedyl cough syrup, kept concealed in slipper bags of stationary articles and those were seized by the police, after preparing a seizure list. Upon interrogation of the petitioners, police came to know that the said items, which contained contraband drugs (codeine) were illegally carried by the petitioners, without any valid document. On a preliminary enquiry, police came to know that the said drugs contained codeine, which is a narcotic drug, specified under the NDPS Act. Accordingly, SI (UB) of Police, Dhubri Police Station, lodged FIR with the Officer-in-Charge, Golakganj Police Station and upon receipt of the said FIR, Golakganj P.S. Case No. 54/2012 under Sections 20(b)/22 of the NDPS Act, was registered and the petitioners of B.A. No. 886/2012 were produced before the Chief Judicial Magistrate, Dhubri, on 14.02.2012 and since then they are in judicial custody,

5. Samples of the seized articles, were sent to the Directorate of Forensic Science, Assam, Kahilipara for chemical examination. The report, submitted by the Director-cum-Examiner of Directorate of Forensic Science, Assam, indicates that each bottle of the seized Phensedyl contained 100 ml syrup, which gave positive test for codeine in the form of codeine phosphate. The samples were examined in three batches and the sample bottles of phensedyl were examined in two lot, one lot contained 7 bottles and other lots contained 3 bottles. As per the FSL report, each bottle of 100 ml Phensedyl contained 189.85 mg of codeine phosphate. In another batch of samples, each bottle of 100 ml phensedyl contained 183.15 mg of codeine phosphate. The report also indicates that each bottle of Recodex, containing 100 ml syrup, contained 182.73 mg of codeine phosphate.

6. Aggrieved by the detention aforesaid, the petitioners have come up with the present bail applications.

7. Mr. S. Lodh, learned counsel, appearing for the petitioners, has submitted that, in view of Section 2(xi)(a) of the NDPS Act, codeine being a derivative of opium, is a manufactured drug and that as per Sl. No. 35 of the Government of India's Notification No. S.O. 826 (E), dated 14.11.1985 and S.O. 40(E), dated 29.01.1993, (copy of which is annexed as P/3), possession of codeine up to 100 mg, per dose unit and with a concentration of not more than 2.5% in undivided preparation and which have been established in a therapeutic practice are exempted from the purview of NDPS Act. Therefore, it is contended that as the codeine found in the seized phensedyl and Recodex, being less than 100 mg, the petitioners cannot be prosecuted under the NDPS Act. Mr. Lodh, learned counsel for the petitioners has drawn the attention of this court to the communication dated 26th October, 2005 issued by the Drugs Controller General of India (copy of which is annexed as Annexure-P-4) and submitted that by the said communication, the authority concerned clarified that preparation containing codeine phosphate of 10 mg, as one of the ingredients, do not fall under the provisions of the NDPS Act and Rules, but it

falls within the Schedule H of the Drugs and Cosmetic Rules.

8. In view of the above, it is submitted that as the seized phensedyl and Recodex contain less than 10 mg of codeine phosphate, per dose i.e. 5 ml, the arrest and the detention of the petitioners, under the NDPS Act is unlawful and as such, they are entitled to be released, on bail. In support of his contention, learned counsel has relied on the decisions held in the case of Deep Kumar & Ors. Vs. State of Punjab, reported in 1997 Cri.LJ 3104 and Rajeev Kumar Vs. State of Punjab, reported in 1998 Cri.LJ 1460.

9. Adopting the said argument, advanced by Mr. S. Lodsh, Mr. B.N. Mazumdar, learned counsel, appearing for the petitioners, has submitted that in view of the said Notifications dated 14.11.1985, 29.01.1993 and 26th October, 2005, the offence committed by the petitioners, does not come under the NDPS Act and that they may, at best, be prosecuted for violation of the provisions/conditions, if any, prescribed by the Drugs and Cosmetic Rules. It is also submitted that there is no material to show that the petitioners committed offences under Sections 468/420 IPC and as such the detention of the petitioners, for committing such offences as well as the offence under Sections 20(b)/22 of the NDPS Act is illegal and as such, the petitioners are entitled to release on bail.

10. Mr. M. Mukherjee, learned counsel, appearing for the petitioners, drawing the attention of this court to the FIR of Golakganj P.S. Case No. 63/2012, has submitted that though the said truck, alongwith the petitioners, was taken to the police station, on 16.02.2012 at about 8-30 p.m., the search was made on 17.02.2012, the FIR was lodged on 17.02.2012 and the petitioners were produced before the Addl. Chief Judicial Magistrate, Dhubri on 18.02.2012, after keeping them in custody, with effect from 16.02.2012. In view of the above, it is submitted that the police committed illegality by detaining the petitioners for more than 24 hours i.e. from 8-30 p.m. of 16.02.2012 to 18.02.2012 and thereby violated the Constitutional mandate. Therefore, it is submitted, by Mr. Mukherjee, learned counsel, appearing for the petitioners, that the detention of the petitioners is illegal and in violation of the Constitutional provisions and as such the petitions are entitled to be released on bail, inasmuch, as their detention cannot stand in the eye of law.

11. Mr. Mukherjee, the learned counsel, in tune with the submission made by Mr. S. Lodh, referring to the provision of Section 2(xi)(b) of the NDPS Act and the Notifications dated 14.11.1985, 29.01.1993 and 26th October, 2005, has submitted that, as the codeine, found in the seized phensedyl and Recodex, does not exceed the permitted limit i.e. 100 mg per dose, it cannot be held that the petitioners have committed any offence under the NDPS Act.

12. The learned counsel, referring to the Rules 96 of the Drugs and Cosmetic Rules has submitted that the dose per unit being 5 ml, the existence of 189.85 mg of codeine in a bottle containing mixture/ solution of 100 ml of phensedyl/ Recodex is

within the permissible limit, in as much as the codeine per dose is only 9.45 mg, which is much less than the permitted limit of 10 mg per dose. Hence, it is contended that that the alleged mischief does not fall under the NDPS Act.

13. Mr. Mukherjee, learned counsel has also submitted that the bar prescribed by the provisions of Section 37 of the NDPS Act is also not applicable in the present case, inasmuch as, the seized items do not contain prohibited quantity of codeine (Manufactured Drug). It is also submitted that the codeine found in the possession of the petitioners, does not amount to commercial quantity. Therefore, it is submitted that the bar of granting bail, as prescribed by Section 37 of the NDPS Act, is not attracted in the present case.

14. Mr. Mukherjee, learned counsel, appearing for the petitioners, distinguishing the decisions rendered in [E. Micheal Raj Vs. Intelligence Officer, Narcotic Control Bureau](#), Union of India Vs. Jagadish Singh, 2011 (CriLJ) 2601 and Sayed Alam & Anr. Vs. State of Assam, 2011 (CriLJ) 3140 [2010 (5) GLT 59], as relied upon by the prosecution, has submitted that the decision rendered in the first case relates to heroine, second case relates to brown sugar and the third case relates to spasm-poxivon, which are not included in the Circular dated 26.10.2005. The learned counsel, appearing for the petitioners has also submitted a written argument, in B.A. No. 885/2012, which has been place on record.

15. Resisting the said argument, advanced by the learned counsel, appearing for the petitioners, Mr. Z. Kamar, learned Public Prosecutor, Assam, appearing on behalf of the State respondent, while underlining the adverse affect of psychoactive drugs on the human body, the world societys" concern, for the menanace caused by drugs and the necessity of restriction in the use, possession and sale of drugs, has submitted that the possession, carriage and use of manufactured drugs, beyond the permissible limit and also in violation of procedure and the rules prescribed by law is illegal and that such violation is punishable under the NDPS Act. Referring to Sl. No. 28 and 49 of the table provided under the NDPS Act, the learned Public Prosecutor has submitted that codeine and Ethyl-morphine are contraband drugs and as per the FSL report, codeine has been found in the form of codeine phosphate. It is also submitted that 10,000 bottles of Recodex and 24,450 bottles of phensedyl were found in possession of and seized from, the petitioners of BA. No. 886/2012 while 347 cartoons of Phensedyl cough syrup and 102 cartoons of Recodex cough syrup, each cartoon containing 100 bottles of 100 ml syrup were found in possession of and seized from, the petitioners of B.A. No. 885/2012.

16. The learned Public Prosecutor has also submitted that applying the principles as propounded in the case of [E. Micheal Raj Vs. Intelligence Officer, Narcotic Control Bureau](#), and in the case of Sayed Alam & Anr Vs. State of Assam, reported in 2010 (5) GLT 59, it is found that the petitioners in B.A. No. 886/ 2012 were in possession of 6 kg 305 grams of codeine phosphate, which was much above the one kg i.e., commercial quantity. Similarly, it is submitted, 8 kg 215 grams of codeine phosphate

were in the possession of the petitioners of B.A. No. 885/2012. Referring to the provisions of Rules 66 of the NDPS Rules, 1985 (hereinafter, called the "NDPS Rules"), the learned Public Prosecutor has submitted that the said Rule prohibits any person from possessing any psychotropic substance for any of the purpose covered by the Drugs and Cosmetic Rules, 1954 (herein after called the Drugs and Cosmetic Rule"), unless he is lawfully authorized to possess such psychotic substance for any of the purpose as mentioned in the Rules. The learned Public Prosecutor has also submitted that the petitioners, during investigation, could not produce or show any documents, whatsoever, to substantiate that they had authorization or permit or permission as prescribed by the Act and Rules to possess and carry such a huge quantity of drugs. It is contented by the learned Public Prosecutor that the petitioners could not produced duly filled form No.7 of the NDPS Rules to substantiate that the possession and carriage of the seized drugs were lawful. It is also submitted that the petitioners could not produce any document to show that the seized items were carried by them for medical purpose under valid permit.

17. Referring to the Notifications dated 14.11.1985, 29.01.1993, the learned Public Prosecutor has submitted that the said notifications are applicable to the manufacturer of the Drugs Company and that the said notifications, being standing orders, cannot over ride the statutory provisions of the law. The learned Public Prosecutor has also contended that the ratio laid down by this Court in 2011 Cri.LJ 3140: 2010 (5) GLT 59 and the decision of the Bombay High Court, rendered in [Union of India \(UOI\) Vs. Jagdish Singh and Another and Others](#), are applicable to the present case. It is also submitted that the decision rendered by the Punjab and Haryana High Court, as referred to on behalf of the petitioners, relates to the fact that the accused persons, therein, were having valid drug license to possess and sell the drugs i.e. phensedyl etc, but in the present case the petitioners were found, while carrying drugs, concealing with house hold articles in a clandestine manner in two trucks and they failed to produce any drug license, authority, permission to possess or sale or transport the such items.

18. Therefore, it is submitted that the possession and transportation of the seized drugs, amounted to commission of offence under the NDPS Act. The learned Public Prosecutor has also submitted that, considering the huge quantity of the contraband drugs, found in the possession of the petitioners, it cannot be held that they are not guilty of the offence under the NDPS Act and also that, in the event of releasing the petitioners on bail, they would not repeat such offence.

Therefore, it is submitted, by the learned Public Prosecutor, that the petitioners carried the seized manufactured narcotic drugs, violating the provisions of Section 8(c) of the NDPS Act and as such they are liable to be prosecuted u/s 21 (c) of the NDPS Act.

In view of the above submissions, the learned Public Prosecutor has prayed for rejecting the prayer for bail, made on behalf of the petitioners in both these bail

applications.

19. In support of his contentions, the learned Public Prosecutor has relied on the decision held in the case of Sayed Alam & Anr. Vs. State of Assam, reported in 2010 (5) GLT 59 : 2011 (CriLJ-3140), Union of India Vs. Jagadish Singh, reported in 2011 (CriLJ) 2601, [E. Micheal Raj Vs. Intelligence Officer, Narcotic Control Bureau](#), State represented by Inspector of Police Vs. N.M.T. Joy Immaculate, reported in 729, H.N. Rishbud Vs. State of Delhi, reported in AIR 1955 SC 159. The learned Public Prosecutor has also submitted a written argument.

20. Having heard the learned counsel, appearing for both the parties and carefully perusing the materials on record, it is found that huge quantity of phensedyl and Recodex cough syrup were found in the possession of the petitioners while they were carrying the said substance in their trucks. Admittedly, each bottle contained 100 ml of the solution. The chemical examination report, submitted by the Forensic Science and Laboratory reveals that each 100 ml bottle of phensedyl contained 183.15 mg to 189.85 mg of codeine in the form of "codeine phosphate", which gave positive test for codeine. Similarly each 100 ml bottle of Recodex contained 182.73 mg of codeine phosphate, which gave positive test of codeine. According to Serial No. 28 of the table, provided by the NDPS Act the chemical name of codeine, is 3-O-methyl morphine and 2 gram of the same is small quantity, while 1 (one) Kg is commercial quantity.

21. There is no dispute that, codeine being a opium derivative as defined by Section 2(xi) of the NDPS Act, is manufactured drug.

Admittedly, manufactured drug, in the form of "codeine" was found in the possession of the petitioners. Now the question is if the possession of the said substance amounted to commission of offence under the NDPS Act.

22. The Government Notifications No. S.O. 826(E) dated 14.11.1985 and S.O.40(E) dated 29.01.1993, which included manufactured drugs exempts certain preparations and dilution from the purview of the narcotic drugs. Serial No. 35 of the said Notification relating to codeine, reads as follows:

Sl. No. 35. Methyl morphine (commonly known as "Codeine") and Ethyl morphine and their salts (including Dionine) all dilutions and preparations except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drugs per dosage unit and with a concentration of not more than 2.5% in undivided preparations and which have been established in Therapeutic practice.

23. Therefore, it is clear that the preparation containing codeine, the content of which is not more than 100 mg of the drugs per dosage unit and with a concentration not more than 2.5% in undivided preparation and which have been established in Therapeutic practice is not a narcotic drug.

To derive the benefit of the exemption, prescribed by the said notifications, two conditions are to be fulfilled:-

(i) Firstly, it must be established that the preparation does not contain more than 100 milligram of codeine per dose unit and concentration of not more than 2.5% in undivided preparation.

(ii) It must be shown that the same has been established in Therapeutic practice. 25. The communication dated 26th October, 2005 (Annexure - P/4), issued by the Drug Controller General of India, Directorate General of Health Services, Nirman Bhawan, New Delhi, as referred to on behalf of the petitioners, also prescribed that, apart from containing the drugs to the extent permitted, it must also be shown that, the same has been established for therapeutic practice. As defined by Section 2 (xiv) of the NDPS Act, "narcotic drugs", amongst others, includes all manufactured drug. Therefore, every manufactured drug, is nothing but a narcotic drug. Hence, narcotic drug was found in possession of the petitioners.

25. This Court in the case of Sayed Alam & Anr. Vs. State of Assam & Anr. (supra), while holding that the manufactured drug, being a narcotic drug, the prosecution u/s 21(c) of the NDPS Act is maintainable. In the above referred case, discussing the provisions of Section 8 of the NDPS Act, the learned single Judge observed as follows: "48. From a bare reading of Section 8, it becomes clear that possession of both narcotic drug as well as psychotropic substance is prohibited except when such possession is for medical or scientific purposes and in the manner and to the extent provided by the provisions of the NDPS Act or the rules or orders or the conditions of the licence granted the 2010 (5) GLT 59 thereunder.

In view of the above provision of law, possession of narcotic drug or psychotropic substance is prohibited except for medical or scientific purposes and to the extent, as provided by the NDPS Act or the NDPS Rules or orders made thereunder or the conditions of licence granted thereunder.

26. The penal provision prescribed by Section 21 of the NDPS Act, for contravention in relation to manufacture drug and preparation, reads as follows:

Section 21: Punishment for contravention in relation to manufactured drugs and preparations.- "whoever, in contravention of any provision of this Act, or any rule or order made or condition of licence granted there under, manufactures, -possesses, sells, purchases,-transports,- imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both; (b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term, which may extend to ten years and with fine which may extend to one lakh rupees; (c) where the contravention involves

commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakhs rupees: provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

27. Section 80 of the NDPS Act provides that the provisions of the NDPS Act or the Rules thereunder shall be in addition to and not in derogation of the Drugs and Cosmetic Act, 1940 or the rules made thereunder.

28. In the case of Sayed Alam & Anr. (supra), learned Single Judge observed as follows:

67. Thus, a bare reading of the "exception" provided by the first provision to Section 8(c) would make it clear that the proviso has several conditions attached to the use or possession of narcotic drugs or psychotropic substances. The conditions are that though a narcotic drug or psychotropic substance can be used for medical or scientific purpose, the same has to be in the manner and to the extent as may be provided by the NDPS Act or the Rules or the orders made thereunder and, in a given case, where any provision imposes any requirement by way of license, permit or authorization, then, such use or possession must be in accordance with the terms and conditions of such licence, permit or authorization. A person, therefore, found in possession of a narcotic drug or psychotropic substance, is under an obligation to bring his case within the "exception" to Section 8(c) of the NDPS Act, if he intends to receive the benefit of the "exception" which section 8 (c) contains. Merely, therefore, because of the fact that the substance, found in his possession, can be used, or is used, as a medicine or for scientific purpose, such use or possession, as the case may be would not ipso facto become justified.

29. Section 8(c) of the NDPS Act has clearly prohibited the possession of the narcotic drugs and psychotropic substance, except for medical or scientific purpose. This exception is subject to condition that the narcotic drugs or psychotropic substance is not only for medical or scientific purpose, but the possession is in a manner as provided under the NDPS Act or rules or the orders etc. Therefore, there is no difficulty in understanding that the possession or the use of the said contraband substance is subject to the existence of any licence or permit, as prescribed by the law and also up to the quantity, which is prescribed by the NDPS Act. If the possession is not as per the terms and condition of licence or permit or authorization, the person(s) concerned is liable to be prosecuted under the NDPS Act, inasmuch as the possession etc. must be in conformity with the conditions/ or manner prescribed by Section 8 of the NDPS Act. Therefore, it can be understood that the possession, even if for medical or scientific purposes, must be subject to the conditions prescribed by the licence, permit, protection etc., as may be issued under the law.

30. In the above referred case, the petitioners were also found to have possessed "spasmo proxivon capsules" (31,298 Nos.), which gave positive test for pro-poxyphene, the learned single Judge, observed that as the petitioners failed to produce any licence, permit or authorization in support of the possession of the said contraband substance, the pro-poxyphene, the total quantity of which, by addition, came to 4.877 kg, was much more than the commercial quantity (500 grams), because each capsule contained 479.50 mg pro-poxyphene.

31. In order to get benefit of exemption provided by the Govt. notifications aforesaid, from the preview of the NDPS Act, the person, possessing the contraband item (in the present case, codeine) is required to establish or show that the possession was for medical purpose and as per the license, permit or prescription or authorization, issued by the prescribed authority. Unless such permission, licence or permit etc, can be shown in support of the possession, the possession of the narcotic drug would amount to violation of the provisions of NDPS Act., and thus the act committed would come within the preview of the NDPS Act.

32. In the case of E. Micheal Raj (Supra), the opposite party No. 2 was found to have carried 4 KG heroine in two packets. The purity of heroine was found to be 1.4% and 1.6 %. As the total quantity of the contraband items seized from the appellant was 4.07 kg and since the purity of heroine was found to be 1.4% and 1.6% respectively, in the two samples, the court came to the conclusion that the total quantity of heroine in possession was only 60 grams (1.4+1.6= 1.5% of 4.07 kg = 60 grams).

33. Applying the said principle laid down in the case of E. Micheal Raj (Supra) and in the case of Sayed Alam & Anr (supra), there is no difficulty in holding that the total quantity of codeine, found in the possession of the petitioners in BA. No. 885/12 was 8.218 Kg and in BA No. 886/2012 was 6.306 Kg. The calculation in both the cases may be indicated below.

B.A. No. 885/2012.

Recodex	10,200x182.73	=	1863	=	1.863
	milligrams		Grams		Kilograms
Phensedyl	34,700x183.15	=	6355	=	6.355
	milligrams		Grams		kilograms

Total = 8.218 Kilograms

i.e. Total 8 Kilograms 218 Grams.

B.A. No. 886/2012.

Recodex	10,000x182.73	=	1827	=	1.827
	milligrams		Grams		Kilograms
Phensedyl	24,450x183.15	=	44478	=	4.478
	milligrams		Grams		Kilograms

Total = 6.305 Kilograms

i.e. Total 6 Kilograms 305 Grams.

34. As per the table prescribed by the NDPS Act (item 28), 1 (one) kg of codeine is to be treated, as commercial quantity. Therefore, applying principles laid down in the above referred cases, it can be safely concluded that the codeine i.e. narcotic drug found in the possession of the petitioners was more than the commercial quantity.

35. In the cases of Deep Kumar & Ors. (supra) and Rajeev Kumar (supra), the possessors were carrying, on business of whole sale chemist under valid drug licence and they were authorized stockiests of company, dealing with whole sale medicines, having huge stock to be supplied to all the retailers for further sale to consumer. In the said cases, the court came to the findings that the seized drugs were found to be possessed for medical purpose.

But in our present cases, the petitioners were found carrying the seized drugs in a clandestine manner, concealing amongst house hold articles, through the National Highway, crossing inter-State boundaries, without any valid permit, protection or authorization etc. There is nothing, on record, to show that the seized drugs were carried for the purpose of medical use. Therefore, the decisions rendered in the above referred cases, relied upon by the learned counsel, appearing for the petitioners, are not applicable in our present case.

As the petitioners were found in possession of huge quantity of contraband item, that too in violation of statutory provision, the provision of Section 105 of the Indian Evidence Act will come into application.

36. In the case of Jagadish Singh (supra), the learned single Judge held that to bring a case under exception, the initial burden will naturally lie on the concerned person to show that he came to possession etc, for the medical purpose or scientific purpose and that the same was done by the manner and to the extent provided by the provisions of the Act and the Rules thereunder.

37. In view of the statutory provisions prescribed by Section 105 of the Indian Evidence Act, Section 8 (c) of the NDPS Act and the Govt. Notifications as indicated earlier, it was the burden of petitioners to show that their possession was lawful i.e. for medical purpose under licence or provision granted by the authority and that their possession comes within the exception, that their possession was for medical or scientific purpose. But the petitioners have failed to discharge the said burden. This failure, on the part of the petitioners, makes them liable under the NDPS Act, for possessing, carrying the narcotic drugs.

38. In the light of the above, as the petitioners are found to have carried huge quantity of codeine (narcotic drugs), which is found to be more than commercial quantity, in violation of the statutory provision of Section 8(c) of the NDPS Act, the provisions of NDPS Act would be applicable in the present cases and the petitioners of both the bail applications can be prosecuted u/s 22(c) of the NDPS Act.

39. With regard to the submissions advanced by the learned counsel, appearing for the petitioners that the petitioners being produced before the learned Magistrate after the statutory period of 24 hours, their detention was in violation of the law and the constitutional mandate, it is found that the FIR was lodge on 17.12.2012 and the trucks alongwith the contraband items were intercepted at about 08.30 pm on 16-02-2012. The said trucks and the petitioners were detained at the Police Station for conducting search and interrogation. It is submitted by the learned Public Prosecutor that due to darkness, the trucks could not be searched till the next morning and as such the police had no other alternative, but to detain the trucks and petitioners in the police station. From the FIR, it appears that, after conducting search, on the next morning, the contraband items were found in the trucks and those were seized on 17.02.2012. The forwarding report also reveals that after the seizure, the petitioners were arrested on 17.02.2012. The FIR also indicates that the petitioners were kept in custody for interrogation.

40. In the case of NMT Joy Immaculate (Supra) police remand and detention challenged. In the said case, the Supreme Court held that the order of remand has no bearing on the proceeding of the trial court itself nor it can have any effect on the ultimate decision of the case and that if the order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of the proceeding.

In the case of H.N Rishbud (Supra), the Supreme Court held that invalid investigation or illegality in investigation has no bearing on the competence or procedure relating to cognizance or trial.

41. In view of the above principles of the law, laid down by the Supreme Court, I am of the considered opinion that the initial wrongful detention., if any, cannot rectify the subsequent detention made on the basis of the court's order.

That apart, police has mentioned the grounds for which the petitioners were detained on the night of 16.02.2012 and lodged the FIR on 17.02.2012 followed by production of the petitioners on 18.02.2012.

42. Considering the facts and circumstances, as indicated above, the forwarding of the petitioners to the Court on 18.02.2012 i.e after detaing them in the police station with effect from 16.02.2012 (8-30 p.m.) for interrogation, and search of the vehicles, cannot be sufficient ground, at this stage, to release them on bail.

The facts and circumstances as discussed above, does not satisfy that there exists reasonable ground for believing that the petitioners are not guilty of the offence under the NDPS Act.

43. Considering the manner under which the contraband items were carried, it cannot be concluded that in the event of release of the petitioners on bail, they would not commit any further similar nature of offence. Therefore, considering

entire aspect of the matter and carefully perusing the materials on record, I do not find sufficient reason to release the petitioners on bail.

44. In view of what has been discussed above, I find no merit in these bail applications, accordingly the prayer for bail, made on behalf of the petitioners, is rejected.

45. Both the bail applications are dismissed. Return the case diary.