



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Misc(Pet.) No. 2877/2021

Suo Motu

----Petitioner

Versus

Union Of India

----Respondent

For Petitioner(s) : Suo Motu



**JUSTICE DINESH MEHTA  
(VACATION JUDGE)**

**Order**

**11/06/2021**

(1) The present petition under section 482 of Cr.P.C. has been registered pursuant to order dated 11.6.2021, passed by this Court in SB Cr. Misc. Bail Application No.4986/2021.

(2) While dealing with the said bail application and other like matters, it has been brought to the Court's notice that the notification No.1055(E) dated 19<sup>th</sup> October, 2001 issued by the Central Government in exercise of the powers conferred by clauses (viiia) and (xxiiia) of section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act of 1985) does not specify small or commercial quantity for cultivation of Papaver somniferum commonly known as opium poppy or poppy plants.

(3) Note No.3 given at the bottom of the notification gives out following reason for not specifying the quantity:



“3. “Small Quantity” and “Commercial Quantity” with respect to cultivation of opium poppy is not specified separately as the offence in this regard is covered under clause (c) of section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985.”

(4) In the opinion of this Court since the very cultivation of opium poppy without a license is prohibited under section 18 of the Act of 1985, the view of the Central Government that cultivation of opium poppy irrespective of its quantity is covered by section 18(c) of the Act of 1985, apparently runs contrary to statutory position.

(5) In the face of above stipulation in the notification, each case of cultivation of poppy plants irrespective of number (1 plant or 1 lac plants) is being considered punishable under the provisions of section 18(c) of the Act of 1985 and offenders are being released on bail without ensuring observance of the provisions contained in section 37(1)(b) of the Act of 1985.

(6) The reason for forming the above opinion is based on comparative reading of sections 16, 18 and 20 of the Act of 1985, which provisions deal with the offence and punishment with respect to cultivation of coca Plant, coca leaves, opium plant or poppy plant and cannabis plant respectively.

(7) It will not be out of place to reproduce provisions contained in sections 16, 18 and 20 of the Act of 1985 so as to have a comprehensive look and better understanding of the scheme of the Act of 1985:

**“16. Punishment for contravention in relation to coca plant and coca leaves.**-Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates any



coca plant or gathers any portion of a coca plant or produces, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses coca leaves shall be punishable with rigorous imprisonment for a term which may extend to ten years or with fine which may extend to one lakh rupees.]

**18. Punishment for contravention in relation to opium poppy and opium.** -Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to [one year], or with fine which may extend to ten thousand rupees, or with both;

(b) 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 which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.]

**20. Punishment for contravention in relation to cannabis plant and cannabis.** -Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable

[(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to [one year], or with fine, which may extend to ten thousand rupees, or with both;



(B) and 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) and 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 lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]”

**\* Emphasis supplied**

(8) If the above provisions are read in juxta position, it comes to fore that in case of cultivation of coca Plant so also in case of sale, purchase of coca leaves, section 16 of the Act of 1985 provides rigorous imprisonment for a term, which may extend to 10 years or fine which may extend to Rs.1 lac. Whereas if the offence relates to cultivation of cannabis Plant, clause (a) of section 20 read with clauses (b)(i) of the Act of 1985 prescribes rigorous imprisonment for a term which may extend to 10 years and also with a fine which may extend to Rs.1 lac. But when it comes to provisions qua cultivation of poppy plants, the offence has been kept at par with the offence of production, manufacture, processing, sale, purchase, transportation, imports inter-State, exports inter-State or use and accordingly punishment under section 18 has been prescribed based on the quantity in question.

(9) It is noteworthy that as a consequence of differently enacted provisions of section 18, the punishment for cultivation of opium poppy too has been made relatable to the quantity and separate punishment has been provided in clause (a), (b) & (c) of Section 18. As per clause (a), if the contraband or prohibited substance involves small quantity, the punishment is upto 1 year



or with fine to the extent of Rs.10,000/-. According to clause (b) if the contraband substance involves commercial quantity, the punishment prescribed is minimum 10 years' imprisonment, which may extend to 20 years alongwith fine, which shall not be less than Rs.1 lac. Whereas clause (c) of section 18 lays down imprisonment upto 10 years and fine extendable to Rs.1 lac in the event of a case not being covered by clause (a) and (b) of section 18 of the Act of 1985.

(10) Section 37(1)(b) of the Act of 1985 postulates that in case an offence involves commercial quantity the court would afford an opportunity of hearing to the Public Prosecutor and record its satisfaction of belief that the accused is not guilty of such offence and he is not likely to commit any offence while on bail.

(11) However, on account of Note No.3 appended with the subject notification, regardless of the number of plants (which in a given case may be a lac), an accused/cultivator claims immunity from rigors of section 37(1)(b) of the Act of 1985 and the courts are left with no other option but to do away with the requirements of section 37(1)(b) of the Act of 1985.

(12) Note No.3 in the notification dated 19.10.2001 is,thus,prima facie incongruous and contrary to the provisions of section 18 of the Act of 1985, because the Parliament has held even the cultivation of opium poppy an equally serious offence as its manufacture, processing, production, sale and purchase etc. by the legislature.

(13) For what has been stated hereinabove, this Court deems it expedient to call upon the Central Government to explain the rationale behind insertion of "Note.3" in the notification dated 19.10.2001, instead of prescribing small and commercial quantity.



The Court would examine expediency, legality or propriety of the 3<sup>rd</sup> note in the notification. The court may further issue appropriate direction(s) to the Central Government (if deemed necessary) to prescribe small quantity and commercial quantity in terms of number of plants or area cultivated so as to bring the notification in consonance and harmony with the provisions and scheme of the Act.

(14) Let notices be issued to the Union of India, through Ministry of Finance, Department of Revenue and also to the State of Rajasthan. Notice of Union of India be served upon Mr. Mukesh Rajpurohit, Assistant Solicitor General and notice of State of Rajasthan be served upon Mr. Farzand Ali, learned Additional Advocate General.

(15) The case be listed before the roster bench on 12.07.2021, while reflecting names of above referred counsel in the cause list.

**(DINESH MEHTA), VJ.**

S1-cpgoyal/-

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