

**Court No. - 27**

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**Case :-** BAIL No. - 13555 of 2021

**Applicant :-** Ajay Bajpai

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Neeraj Singh, Akhilendra Kumar Goswami

**Counsel for Opposite Party :-** G.A.

**Hon'ble Pankaj Bhatia, J.**

1. The present application has been filed seeking enlargement on bail in the offence under Sections 8/21/22 of the NDPS Act. The averments as contained in the FIR are that certain persons were involved in manufacture of fake medicines. On a search being conducted 1540 bottles of 100 ML each which contained a wrapper and two plastic bags containing 536 empty bottles and packaging caps thereof were seized from a Car registration No.UP78DJ6332 and three persons were apprehended. One of the FIRs was registered against them under Sections 420, 274, 275, 467, 468, 471 IPC read with Section 18/27 of the Drugs and Cosmetics Act, 1940 and the second FIR being the present FIR was lodged as Case Crime No.361 of 2021, under Sections 8/21/22 of the NDPS Act.
2. In the FIR, it was alleged that the goods were apprehended and the accused were arrested on the ground that the medicine was fake medicine and on consumption thereof, it can cause damage to the public health. In sum and substance, the main contention was that the medicine being carried out were fake medicine. On the wrapper of the medicine seized, it was mentioned "Chlorpheniramine Maleak and Codeine Phosphate Syrup (max coff)".
3. The apprehension was made out and recorded in the FIR that excess consumption of Codeine can cause intoxication. Based upon the said,

a case has been registered against the accused under Sections 8/21/22 of the NDPS Act.

4. Learned A.G.A. has stated that the recovery was of commercial quantity. The said argument is fallacious and deserves to be rejected outrightly as the number of bottles seized were 1540 which contained 100 ml medicine in each bottle which were manufactured in terms of the license, being termed as commercial quantity needs to be reprimand by this Court.
5. Learned A.G.A. while opposing the bail application has relied upon the report which has come in pursuance to the sample being sent to the Government analyst under Section 25(1) of the Drugs and Cosmetics Act. The said descriptions as appears in the case diary records that the name of the drugs purporting to be contained in the sample suspected to be 'Codeine Phosphate' were tested, the seal was found intact and identical with the specimen of received sample were tested and on testing, the material indeed was 'Codeine Phosphate' and has tested negative for Chloropheniramine Maleate.
6. The name of the manufacturer was also recorded. The test report clearly indicates that they were indeed medicines which were manufactured. The test further indicates that in the opinion of the Testor, the sample referred to is of standard quality as defined under the Drugs and Cosmetics Acts and Rules. The sample conforms to the declared formula on the basis of the test done. The necessary extract is being recorded below:

*“अवलोकन परीक्षण रिपोर्ट... .. Certificate No. R/2090211. Name of Inspector from whom received inspector of Drugs, Unnao C/o Local(Health) Authority, F.D.A. Section O/o District Magistrate, Unnao. 2. Serial No. and date of Inspectors memorandum 010/AKS/Unnao/Raid/AVG/2021 Date 28/08/2021 3.Number of sample 010/AKS/Unnao/Raid/AUG/2021 4. Date of receipt*

02/09/2021 5.Name of drugs purporting to be contained in the sample Max coff Batch No. 010821SMF1 M/D AUG202 E/DJUL 2023 6.Condition of the seal on the packet or on portion of sample or container Seals, etc. Found Intact and identical with the specimen of seal received by I.D. separately. 7.Result of test of analysis with protocols of the test or analysis applied. The Sample tested according to relevant parameters and available facilities. In the opinion of the undersigned the sample referred to above is of standard quality as defined in the Drugs and Cosmetics Act, 1940, and Rules for the reasons given below: The sample conforms to declared formula, on the basis of tests done. Owners name address Sri Gaurav S/o Suresh Singh, Brahm Nagar Shuklaganj, Unnao. Sri Sonu Tiwari S/o Umakant Tiwari, Shakti Nagar] Shuklaganj Unnao. Manufacturers name and address M/s Smilax Health care pvt. etc. Plot No 23, EPIP 1 Jharmazri Buddi 174103 Disst Solan (H.P) Date 08/10/2021 हस्ताक्षर अपठनीय अग्नेजी Rakesh Kumar Govt. Analyst. U.P. Lucknow.”

7. In the light of the abovesaid report, the Counsel for the applicant argues that not only the applicant is liable to be enlarged on bail, the case clearly reflects the reckless manner in which the liberty and the rights of the applicant has been infringed by the Seizing Party misusing their statutory authority provided under the NDPS Act.
8. From the perusal of the FIR as well as the medical report, which are on record, this Court has no hesitation in holding that the search and seizure is clear misuse of the powers conferred upon the authorities. In the light of the specific bar of Section 58 of the NDPS Act coupled with the fact that the NDPS Act is a stringent statute providing for very stringent penal consequences and is to be interpreted strictly as also held by the Hon’ble Supreme Court in the case of ***Tofan Singh vs. The State of Tamil Nadu; (2021) 4 SCC 1.***
9. Prima facie in terms of the Act, Section 2(xiv) defines narcotic drug as under:

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*“(xiv) “narcotic drug” means coco leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs;*

10. Section 2(xxiii) of the NDPS Act defines psychotropic substance which reads as under:

*“(xxiii) “psychotropic substance” means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;*

11. Sub-section (vi) of Section 2 of the NDPS Act defines coca leaf as under:

*“(vi) “Coca leaf” means –  
(a) the leaf of the coca plant except a leaf from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed;  
(b) any mixture thereof with or without any neutral material;  
but does not include any preparation containing not more than 0.1 per cent, of cocaine;”*

12. Cannabis (hemp) is defined under Section 2 (iii) of the Act, which reads as under:

*“(iii) “Cannabis (hemp)” means -  
(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;  
(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and  
(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;”*

13. Opium is defined under sub-Section (xv) of Section 2 of the NDPS Act which is quoted below:

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“(xv) *“Opium” means -*

- (a) the coagulated juice of the opium poppy; and*
- (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy,*

*but does not include any preparation containing not more than 0.2 per cent. of morphine;”*

14. In sub-Section (xviii) of Section 2 of the Act, the poppy straw is defined, which is as under:

*“(xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;*

15. Clearly the product seized did not fall within any of the things specified as narcotic drugs under Section 2(xiv) or a narcotic substance as defined under Section 2(xxiii). Despite the seized quote being medicine, in the seizure memo, no satisfaction forming a reasonable belief was recorded prior to causing the seizure which is a *sine-qua-non* for exercise of powers of seizure under Section 42(c) of the Act.
16. The only thing record in the seizure memo is that excess consumption of codeine can cause intoxication. The said certainly does not qualify to be a ‘reasonable belief’ which is required to be recorded prior to seizure in terms of the mandate of Section 42.
17. The present case is a clear case for proceedings against the officers making the seizure in terms of the mandate of Section 58(1)(b) and (c) of the NDPS Act.

18. In view of all the reasons recorded above, let the applicant *Ajay Bajpai* be released on bail in FIR/ Case Crime No.361 of 2021, under Sections 8/21/22 of the NDPS Act, Police Station Ganga Ghat, District Unnao on his furnishing personal bonds and two reliable sureties of Rs.10,000/- each to the satisfaction of the court concerned with the following conditions:

(1) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence, if the witnesses are present in Court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law;

(2) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code;

(3). In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fail to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(4) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

19. A direction is issued to register a case against the seizing party under the provisions of Section 58(1)(b) of the NDPS Act and for proceeding in accordance with law.

**Order Date :-** 25.11.2021

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