

(2005) 08 DEL CK 0113

In the Delhi High Court

Case No : Crl Misc. (A) 936/05 in Bail Application 2275/04

Devang Bipin Parikh

APPELLANT

Vs

Shri R. Roy, Intelligence Officer Directorate of Revenue
Intelligence Headquarters

RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2, 22, 23, 8
Narcotic Drugs and Psychotropic Substances Rules, 1985 — Rule 64

Citation : (2005) 08 DEL CK 0113

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : K.K. Sud, Neeraj Jain, Satish Aggarwal and Ashish Aggarwal, for the Appellant; Satish Aggarwal and Ashish Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This is an application moved on behalf of the Directorate of Revenue Intelligence, New Delhi, for recall of the order of bail dated 11.1.2005 whereby the accused Devang Bipin Parikh had been directed to be released on bail on his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the trial Court concerned.

2. The applicant seeks recall of the order dated 11.1.2005 on the allegation that the said order had been obtained by mis-representation of facts and law. Essentially, it was argued by Mr Satish Aggarwal, the learned counsel appearing for the applicant, that Buprenorphine Hydrochloride was a Psychotropic Substance under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and it was misrepresented by the counsel for the accused at the time of hearing other said Bail Application No. 2275/2004 that Buprenorphine Hydrochloride I.P. Injections were neither a narcotic drug nor a psychotropic substance and that, Therefore, the NDPS Act would have no applicability.

3. What Mr. Aggarwal is attempting to do is to ask this Court to review its own order granting bail dated 11.1.2005. This, in my opinion, is not permissible in law particularly when the said order was passed in the presence of Mr Satish Aggarwal in open Court. What he is now attempting to point out, ought to have been pointed out by him at that time. Be that as it may, the contentions raised by Mr Aggarwal in this application to establish the offences under Sections 22 and 23 of the NDPS Act have banefully dealt with by me in a detailed judgment delivered today itself in Bail Application 73/2005 and other bail applications entitled Rajinder Gupta v. State etc. In the said judgment I have held that Buprenorphine Hydrochloride is a Schedule 'H' drug under the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945 and, though it is a psychotropic substance within the meaning of Section 2(xxiii) of the NDPS Act, it is not included in Schedule 'I' to the Narcotic Drugs and Psychotropic Substances Rules, 1985. That being the case, its manufacture, possession or sale etc. is not prohibited inasmuch as the prohibition contained in Rule 64 of the said Rules is applicable only in respect of those psychotropic substances which are mentioned in-schedule 'I' to the NDPS Rules. As such, insofar as Buprenorphine Hydrochloride I.P. Injections are concerned, there is no contravention of the provisions of the NDPS Rules. Consequently, the offence u/s 8 of the NDPS Act is not made out. Obviously ,punishment u/s 22 or 23 of the NDPS Act would also not be attracted. As indicated above, this has been held by me in the detailed judgment delivered today itself in Bail Application No. 73/2005 (Rajinder Gupta v. The State) and other matters. This being the position, even if it were assumed for the sake of argument that the application for recall of the order dated 11.1.2005 could at all be maintained, on merits it becomes clear that no interference with the said order is called for.

4. Accordingly, this application is dismissed.