


Sr. No.	Date	Orders
		<p>20-09-2004</p> <p>Present : Mr. R.S. Kundu, Advocate for petitioner Mr. Pawan Sharma, APP for the State</p> <p><u>Crl. M. A. No.11762/2004</u></p> <p>Allowed.</p> <p><u>Crl.M.A. No.11761/2004</u></p> <p>Notice. Mr. Pawan Sharma, APP accepts notice on behalf of State.</p> <p>This application is for an early hearing. The matter is otherwise listed for 12th October, 2004. Instant application is made in view of an order dated 6.9.2004 of Supreme Court directing disposal of bail application by this Court before the next date of hearing.</p> <p>Hearing is, in the circumstances, preponed from 12th October, 2004 for today.</p> <p>Application is disposed of.</p> <p><u>Bail Application No.360/2004</u></p> <p>Heard.</p> <p>The petitioner and two other persons namely</p>

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		<p>Jitender Tyagi and Vireshwar Tyagi were found in unlawful possession of a total of 1 kg of smack out of which 200 gms were recovered from the petitioner, another 200 gms from Jitender Tyagi and the remaining 600 gram from Vireshwar Tyagi.</p> <p>The bail to the petitioner is being sought on the sole plea that the percentage of diacetylmorphine found in 200 gram of smack allegedly recovered from the petitioner, in terms of CFSL report was found to be 1.2% and thus the actual recovery of smack i.e. diacetylmorphine would come to 2.4 gms only, in the range of a small quantity. This argument of learned counsel for the petitioner was taken note of and dealt with by this Court in an order dated 26.5.2004 in the following terms :</p> <p>“.....Besides, small quantity and commercial quantity of the said drugs as prescribed by the notification dated 19.10.2001 will be the same for any preparation thereof be it in the form of mixture, solution in whatever physical condition it may be. Therefore, calculating the weight of diacetylmorphine on the basis of percentage given in the CFSL report is a futile exercise for ascertaining whether</p>

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		<p>the quantity recovered is small, commercial or in between. For the purpose of the Act, what has to be seen is the weight of the preparation itself containing diacetylmorphine, small and commercial quantity for such preparation being the same as those prescribed for diacetylmorphine itself. Thus any preparation weighing more than 250 gram containing diacetylmorphine of whatever potency it may be, will fall within the limits of commercial quantity and the rigours of section 37 (1)(b) of the 'Act' will apply to such cases."</p> <p>In view of the plea that the percentage of diacetylmorphine in a given preparation determines the actual quantity, being negatived in terms of aforesaid order, it is difficult to accept the argument that the petitioner was in possession of only a small quantity. Though the petitioner was allegedly found in possession of only 200 gms of smack, which turns out to be a non-commercial quantity and thus the rigors of Section 37(1) (b) of the Act may not operate, however, in view of the fact that the bail is being sought solely on the ground that the petitioner was in possession of only a small quantity, once such a ground is held non-existent, the bail plea must fail. In the circumstances,</p>

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		<p data-bbox="500 277 958 329">the petition is dismissed.</p> <p data-bbox="517 512 892 606">September 20, 2004 sa</p> <p data-bbox="1020 435 1503 559"> (B.N. CHATURVEDI) JUDGE</p>