

Anti Doping Disciplinary Panel

A-Block, Pragati Vihar Hostel,
Lodhi Road, New Delhi, 110003
Telefax : 011-24368248

To,

Date: 1st May, 2018

Mr. Davinder Singh Kang
S/o Shri Mejar Singh,
38 A, Moti Bagh Colony,
Near Moti Bagh Gurudwara
Patiala, Punjab 147 001

Subject: Decision of the Anti Doping Disciplinary Panel Case No.-21.ADDP.04.2017

NADA VS DAVINDER SINGH KANG

The order containing the decision of the Anti Doping Disciplinary Panel dated 23/04/2018 in respect of final hearing of the above case held on 20/12/2017 and 21/03/2018 is enclosed.

It may please be noted that according to Article 13.7.2 of Anti Doping Rules of NADA 2015, **the time to file an appeal (5 sets) to the National Anti-Doping Appeal Panel shall be twenty one (21) days from the date of receipt of this decision by the appealing party.** The appeal may be filed at the abovementioned address.

Also please note that according of Article 10.6.1- (**Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations**)- Any period of Ineligibility imposed may be partially suspended if you assist NADA in uncovering and/or establishing an ADRV by another Athlete or Athlete Support Personnel pursuant to Article 10.6.1.1 ADR.

Copy of the NADA Anti Doping Rules 2015 may be downloaded from NADA website at the following link:-www.nadaindia.org/en/anti-doping-rule-of-nada

The receipt of this communication may be acknowledged.

Encl: 05 sheets.

(Yasir Arafat)

Copy forwarded together with the copy of the order containing the decision of the Anti Doping Disciplinary Panel for information and action deemed necessary:

1. Indian Olympic Association, Olympic Bhawan, B-29, Qutab Institutional Area, New Delhi- 110016.
2. World Anti Doping Agency, Stock Exchange Tower, 800 Place Victoria (Suit 1700) P. O. Box 180, Montreal (Quebec), H4Z 1B7, Canada
3. Secretary General, Athletics Federation of India, WZ-72, Todapur Main Road, New Delhi 110 012.

4. International Association of Athletics Federation, 17, Rue Princesse Florestine BP 359, MC 98007, Monaco.
5. National Anti Doping Agency, A-Block, Pragati Vihar Hostel, Lodhi Road, New Delhi, 110003.

Encl: 05 sheets.



(Yasir Arafat)

IN THE CHAMBER OF ANTI DOPING DISCIPLINARY PANEL

A- Block, Pragati Vihar Hostel,
Lodhi Road, New Delhi – 110003
Telefax: 011-24368248

In the Matter of **Mr. Davinder Singh Kang, S/o Shri Mejar Singh, # 38 A, Moti Bagh Colony, Near Moti Bagh Gurudwara, Patiala 147 001** for the violation of Article 2.1 of Anti Doping Rules of NADA/WADA Code 2015.

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|-----|--------------------------------|--|
| 1. | Event | Athletics (Javelin Throw) |
| 2. | Name of Competition | Indian Grand Prix-3 |
| 3. | Date of Sample Collection | 15/05/2017 |
| 4. | Nature of sample | Urine |
| 5. | Urine sample Code Number | 495269 |
| 6. | Name of Sample Witness | Mr. Nikhlesh |
| 7. | Name of Dope Control Officer | Mr. Mukesh |
| 8. | Date of testing 'A' Sample | 09/06/2017 |
| 9. | Result of 'A' sample | Adverse Analytical Finding for:
11-nor-delta-9-tetra hydro cannabinol-9-carboxylic acid (THC) –Metabolite of Marijuana at a concentration of 279.0 ng/ml which is above the Decision limit (DL) of 180 ng/ml. The combined uncertainty at the threshold is 15.0 ng/ml. |
| 10. | Date of Initial Review | 13/06/2017 |
| 11. | Date of provisional suspension | N.A. |
| 12. | Date of first notice | 14/06/2017 |
| 13. | Date of testing 'B' sample | N.A. |
| 14. | Result of 'B' Sample | N.A. |
| 15. | Date of second Notice | N.A. |
| 16. | Date of Notification | 09/11/2017 |

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|-----|---------------------|--|
| 17. | Date of hearing | 20/12/2017 & 21/03/2018 |
| 18. | Plea of the athlete | Athlete explained how the Prohibited Substance entered into his body system. |
| 19. | Date of decision | 23/04/2018 |

NADA notified its assertion relating to violation of Anti Doping Rule 2.1 by **Mr. Davinder Singh Kang** (Sports discipline – **Athletics – Javelin Throw**).

Mr. Yasir Arafat Law Officer, NADA presented the case on behalf of NADA and produced the documents in support of the case.

Factual Background:

The athlete participated in 3rd Indian Grand Prix held at New Delhi on 15/05/2017. His urine sample was collected on 15/05/2017 by the Doping Control Officer of NADA. On testing, it returned for an Adverse Analytical Finding (AAF) for the presence of Prohibited Substance namely **11-nor-delta-9-tetra hydro cannabinol-9-carboxylic acid (THC) –Metabolite of Marijuana at a concentration of 279.0 ng/ml which is above the Decision limit (DL) of 180 ng/ml. The combined uncertainty at the threshold is 15.0 ng/ml**, which is a specified substance as per NADA/WADA Prohibited List. Consequently, NADA issued a notice of charge dated 14/06/2017 to the athlete for the violation of Article 2.1 of the Anti-Doping Rules of NADA-2015. Further, the athlete vide his letter dated 27/12/2017 addressed to Director General NADA asked for complete laboratory documentation package with respect to his urine sample analysis performed by National Dope Testing Laboratory.

Hearing was conducted on 21/12/2017 and 21/03/2018 by the Hearing Panel constituted under Rule 8.

Athlete's Submissions:

Upon receiving the notice from the Anti-Doping Disciplinary Panel, the athlete appeared in person with his counsel Mr. Anish Dayal before the Hearing Panel and argued in support of his case. Counsel for the athlete pointed out that the dope test conducted at 07/05/2017 was negative,



however, the sample collected on 15/05/2017 was tested positive on 09/06/2017. NADA issued notification on 14/06/2017 with an adverse finding of confirming presence of THC (Marijuana Metabolite) at a concentration of 279 mg/ml which is above WADA DL 180 mg/ml and threshold value of 15 ng/ml.

The advocate for athlete has fairly accepted the admission of the athlete vide his letter dated 21/06/2017 submitted to NADA. In the said letter the athlete has taken the plea that during the summer months of May, 2017 he experienced bleeding from nose as well as difficulty with regard to urination. On the suggestion of his colleague athletes, he decided to consumed "Thandai" a local preparation normally consumed by people during the summer months. He has also admitted that to drinking Thandai multiple time in this period. In his admission he points that it is subsequently, that he, after being found test positive for Marijuana Metabolite that he enquired from his colleagues about the ingredients in the Thandia and was informed about the presence of Bhang (Marijuana), which he acknowledges and accepts as the cause of the positive test.

The advocate while referring to the anti doping rules of NADA highlights that this substance falls in the specified category of the Prohibited Substance. He draws the attention to the Panel to Article 4.2.2 of the Code dealing with specified substances and specifically emphasis focus on Comment to Article 4.2.2 reproduced as under:

Specified Substance

For purposes of the application of Article 10, all Prohibited Substance shall be Specified Substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. The category of Specified Substances shall not include Prohibited Methods.

Comment to Article 4.2.2: The Specified Substances identified in Article 4.2.2 should not in any way be considered less important or less dangerous than other doping substance. Rather, they are simply substances which are more likely to have been consumed by an Athlete for a purpose other than the enhancement of sport performance.



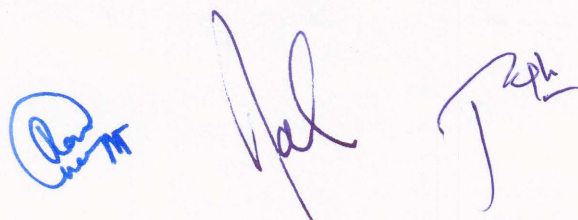
Thereafter, the Advocate points out the option before the Hearing Panel under Article 10.2.1 and 10.2.2 to distinguish the facts of this case and the applicability of Article 10.2.2. He further argues that under Article 10.2.3 the intention to consume the substance as also the desire to cheat in the competition are critical components for its applicability in this specific case, clearly in light of reasoning and admission dated 21/06/2017 of the athlete neither to intention to consume nor cheat in a competition is applicable. So logically a presumption can be made in favour of the athlete for non applicability of this clause.

Per contra NADA has argued that due care and caution should have been taken by the athlete while consuming local beverages without checking their ingredients. NADA has also sought to bring on record that email dated 20th February, 2018 which relates to athlete recently testing positive for steroid following an IAAF out of competition test.

The Panel also disregarded the applicability of the communication dated 20th February, 2018 to the present proceedings as both the unrelated to each other and also the subsequent proceedings will stands on its own merits.

In light of the facts and circumstance and submissions made before the Panel, our considered decision is as follow:

1. Under Article 10.11.1 clearly delay is not attributable to the athlete or any other person.
2. Under Article 10.11.2 there is timely admission on behalf of the athlete, since, the NADA's notification was issued on 14/06/2017, the athlete responded promptly on 21/06/2017.
3. Under Article 10.4 of the NADA Code, Panel has the option of eliminating the period of ineligibility where there is no fault of negligence on the part of the athlete in question. However, in light of the admission of the athlete the applicability of Article 10.4 is ruled out.
4. Article 10.5 refers to the reduction of period of ineligibility based on no significant fault or negligence and under Article 10.5.1.1 the minimum sanction is reprimand with no period of ineligibility and maximum for two years in cases depending upon the degree of fault.
5. Under the NADA Code *No significant fault or negligence is defined as follows:*
The athlete or other person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or



Negligence, was not significant in relationship to the Anti Doping Rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.


The comment to this definition assumes immense importance, since, it is specific for Cannabinoids and refers to clear demonstration that the context of the use was unrelated to sport performance of the athlete. The athlete's admission on 21/06/2017 confirms this clearly.

In light of the above findings and on the specific facts of this case, the Panel concludes that Mr. Davinder Singh Kang deserves a REPRIMAND. The Panel also cautions him that a much higher standard of conscience, care and awareness is expected as well as mandated from an athlete who seeks to compete at National or International level.

The Panel also specifically notes that the presence of Cannabinoids (Marijuana) in this specific case, as admitted by the athlete, was in the beverage *Thandai*, which sometimes is known to added one of the ingredients while preparing of homemade version of this popular beverage. The Panel in no way whatsoever endorses or recommends the use of any Cannabinoids in any consumable items and certainly not in a case of practicing athlete.

Date: 23rd April, 2018


Jagbir Singh
Member


Dr. R. Chengappa
Member


Nalin Kohli
Member