

Crl.O.P.No.11025 of 2015**R.SUBBIAH, J.**

The petitioner, who was arrested on 21.02.2015 for the alleged offences punishable under Section 8(c) r/w 22(c) and Sections 28 & 29 of NDPS Act, in the case in R.R.No.48/1/3/2015-NCB/MDS pending on the file of the respondent, seeks the relief of bail.

2.The case of the prosecution, in brief, is as follows_

The petitioner herein has been arrayed as 2nd accused in this case. Based on specific information received on 20.02.2015 the Officers of Narcotics Control Bureau, Chennai along with two independent witnesses mounted surveillance at the starting of Platform No.3 of Chennai Central Railway Station, where Mumbai-Chennai Mail supposed to come. The said train arrived at about 4.25 hours and a person matching with the description of Javeed Basha (A1) got down from the train and reached the waiting hall and met another person matching with the description of Sadiq Basha (petitioner herein/A2) and Javeed Basha (A1) gave a black backpack bag that was carried by him to Sadiq Basha(A2). At that time, the officers along with the independent witnesses approached them and enquired about their identity after introducing themselves. The person, who brought the backpack bag, introduced himself as Javeed Basha and said that he is coming from Mumbai, and the person, who received the backpack bag, introduced himself as Sadiq Basha (A2), and both persons said that they are living at No.37/26,

Elephant Tank, 2nd Street, Royapettah, Chennai-14. On enquiry, Sadiq Basha (A2) replied that he is having about 3kg of Methamphetamine in the bag brought for him from Mumbai by his brother Javeed Basha(A1). As the passenger were increasing in the waiting hall, they were taken to Bomb Detection Squad Room along with witnesses. The Officers informed the accused persons about the right under Section 50 of NDPS Act, for which they replied that they do not want to be searched before the Magistrate or Gazetted Officer and the officers present there can themselves search them. Then the accused persons viz., Javeed Basha and Sadiq Basha opened the black colour backpack bag and took out three identical sized packets and handed over to Investigating Officer viz., Sanjay Kumar Acharya, and the said packets were found with white coloured crystals in all three packets and on test, all the three packets answered positive for the presence of Methamphetamine, a psychotropic substance covered under NDPS Act. As they were not having any valid licence to carry the three packets of white colour crystal, all the three packets were seized and all the white colored crystals from the three packets were put in a polythene cover and stirred well from top to bottom, and on weighing it found 2.980 kgs, two samples of 5 grams each were drawn and packed and sealed and marked as S1 & S2 and the remaining 2.970 kgs white colour crystal bulk was packed and marked as P1. The packing materials were packed and marked as P2. The accused persons Javeed Basha and Sadiq Basha handed over documents and currency to the officer and the same were seized under a mahazar and the mahazar

was prepared at the spot and summons were issued to the accused persons Sadiq Basha and Javeed Basha and they appeared and gave their voluntary statement on 21.2.2015 wherein they admitted their roll and admitted their guilty in the procurement, possessions, transportation, sale and the conspiracy. Based on the seized objects and incriminating documents and voluntary statements, both the accused persons were arrested and produced before the learned Magistrate for remand and subsequently, they were remanded. Now, the present bail petition has been filed by the 2nd accused.

3.It is the main submission of the learned senior counsel appearing for the petitioner that the petitioner herein/A2 gave confession statement on 21.02.2015 and the recitals in the confession statement of the petitioner herein/A2 would show that he has given money to Javeed Basha to procure the substance. But, the petitioner's wife, who gave statement on behalf of the petitioner, has retracted the statement given by the petitioner/A2. The petitioner's wife had stated in her statement that on 21.02.2015 a few person took her husband from their house and when she met her husband in the Central Prison at Puzhal, he said to her that at the Central Railway Station in a room he found his brother Javeed Basha sitting in a chair and his hands tied to the chair; that the Officers then took both of them to their office; that in the office room, the petitioner was compelled, after subjecting him to severe beatings both by hands and lathis all over his body, to write a statement as though he is responsible and was in possession of certain

psychotropic substance; that due to severe beatings and compulsions, the petitioner had to write a statement to the dictation of the officers.

4. The learned senior counsel for the petitioner further submitted that except the compelled confession statement said to have been given by the petitioner/A2, there is no other material to implicate the petitioner in this case. In fact, there is no recovery of Methamphetamine, a psychotropic substance covered under NDPS Act, from the petitioner herein. The confession statement given by the petitioner to the officer of the Narcotic Control Bureau is hit by Section 25 of the Evidence Act, as all the officers of the Narcotic Control Bureau have been vested with the powers of the Station House Officer under Criminal Procedure Code; hence, the statement in the nature of confession as in the instant case cannot be treated as against the person accused of an offence under NDPS Act.

5. In this regard, the learned senior counsel for the petitioner by inviting the attention of this Court to the Judgment reported in **(2008) 4 SCC 668 [Kanhaiyalal Vs. Union of India]**, submitted that in the said case the Hon'ble Supreme Court has held that the Officers of the Department of Revenue Intelligence who have been vested with powers of an officer in-charge of a police station under Section 43 of the NDPS Act, 1985 are not 'police officers' within the meaning of Section 25 of the Evidence Act. Therefore, as per the said judgment, the Officers of the Narcotic Bureau are

not police officers; But, the said position was changed in the judgment delivered by the Hon'ble Supreme Court in the same year in the case of **Noor Aga Vs. State of Punjab and another** reported in **(2008) 16 SCC 417**, wherein it has been held that an officer invested with the power of a police officer by reason of a special statute in terms of sub-section (2) of Section 53 would be deemed to be police officer and for the said purposes of Section 25 of the Act shall be applicable. Therefore, in the instant case, as per the said judgment in **Noor Aga case**, the officers of the Narcotics Control Bureau shall be deemed to be the police officers and when that being so, the confession statement given before them is hit by Section 25 of the Evidence Act. Therefore, confession statement given by the petitioner herein cannot be relied upon by the prosecution. Thus, the learned senior counsel for the petitioner submitted that if the said confession statement of the petitioner is eschewed in the instant case, no other evidence is available as against the petitioner herein.

6. Further, by inviting the attention of this Court to the judgment reported in **(2011) 12 SCC 298 [Nirmal Singh Pehlwan @ Nimma Vs. Inspector, Customs, Customs House, Punjab]**, the learned senior counsel for the petitioner submitted that in the said case, by referring the judgments in the case of **Noor Aga Vs. State of Punjab and another** reported in **(2008) 16 SCC 417**, the Hon'ble Supreme Court has held that the confession made before the Customs Officer in an NDPS case is hit by

Section 25 of the Evidence Act. But, in the subsequent case, viz., in the case of **Tofan Singh Vs. State of Tamil Nadu** reported in **(2013) 16 SCC 31**, the Division Bench of the Hon'ble Supreme Court observed that in the judgment in **Kanhaiyalal case** has not examined the principles and the concepts underlying Section 25 of the Evidence Act, 1872; but, the subsequent judgment in **Noor Aga case** the Division Bench has dealt very elaborately with this matter. Thus, the Hon'ble Division Bench of the Supreme Court referred the matter to the large Bench for reconsideration of the issue as to *whether the officer investigating the matter under the NDPS Act would qualify as police officer or not*. Thus, the learned senior counsel for the petitioner submitted that though the matter has been referred to the larger Bench, as on date the latest judgment ie., **Noor Aga case** would say that the customs officer investigating the matter under NDPS Act shall be deemed to be a Police Officer. Therefore, according to the learned senior counsel for the petitioner, as per the latest judgment, the confession statement of the accused person before the Narcotic Bureau cannot be relied upon by the prosecution. Further, in the case of **Tofan Singh Vs. State of Tamil Nadu – (2013) 16 SCC 31** though the matter was referred to the larger Bench, the Division Bench granted bail to the accused person in that case. Thus, the learned senior counsel appearing for the petitioner submitted that by applying the principle laid down in the latest judgment viz., in **Noor Aga case** bail has to be granted to the petitioner herein as there is no other material available against the petitioner, except his confession statement

given before the Officers of the Narcotic Bureau.

7.But, the learned Special Public Prosecutor for NCB Cases vehemently opposed the granting of bail to the petitioner stating that the petitioner was arrested not merely on the confession statement alone, but also on the basis of the other materials. According to the prosecution, the recovery of the narcotic substance viz., Methamphetamine was seized from both the accused persons and in this regard, the learned Special Public Prosecutor has also invited the attention of this Court to the mahazar prepared by the respondent on the spot. Further, even after **Noor Aga Case**, the Hon'ble Supreme Court has delivered judgments in the year 2011 holding that merely because the officers of the Central Bureau of Narcotics are invested with powers of an officer-in-charge of police station the same shall not make them police officers within the meaning of Sections 25 & 26 of Evidence Act. In this regard, the learned Special Public Prosecutor relied upon the judgment of the Hon'ble Supreme Court reported in **2011 CRI. L.J. 3579 [Ram Singh Vs. Central Bureau of Narcotics]** and **2008 (7) Supreme 783 [Ratan Kumar Vishwas Vs. State of UP & anr]**.

8.The learned Special Public Prosecutor further submitted that since the contraband seized is commercial quantity, Section 37 of NDPS Act attracts in this case; hence, the petitioner has to satisfy the twin conditions of Section 37 of NDPS Act ie., there are reasonable grounds for believing that

he is not guilty of such offence and that he is not likely to commit any offence while on bail; but, the petitioner herein has not satisfied the conditions laid down under Section 37 of NDPS Act; hence, he is not entitled to the relief of bail. Thus, the learned Special Public Prosecutor sought for dismissal of the bail petition.

9. Keeping the submissions made on either side, I have carefully perused the materials available on record.

10. It is the main submission of the learned senior counsel for the petitioner that as per the latest judgment of the Hon'ble Supreme Court i.e., **Noor Aga Case**, an officer invested with the power of a police officer by reason of a special statute in terms of sub-section (2) of Section 53 would be deemed to be police officer and as such Section 25 of the Evidence Act will be applicable. Therefore, the confession statement said to have been recorded from the petitioner herein by the respondent is hit by Section 25 of the Evidence Act.

11. But, I find that subsequently in the year 2011, the Hon'ble Supreme Court in the case of **Ram Singh Vs. Central Bureau of Narcotics** reported in **2011 CRI. L.J. 3579** had held that merely because the officers of the Central Bureau of Narcotics are invested with powers of an officer-in-charge of police station the same shall not make them police officers within

meaning of Sections 25 & 26 of Evidence Act. Further, from the materials produced before this Court, I find that as per the Mahazar prepared by the respondent at the spot, the recovery of the contraband was made from both the petitioner and the other accused. Since the contraband seized from the petitioner is commercial quantity, the petitioner has to satisfy that there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail, as required under Section 37 of the NDPS Act. But, in the instant case, the petitioner has not satisfied the said conditions. Further, though it is submitted by the learned senior counsel that in the case of **Tofan Singh Vs. State of Tamil Nadu** reported in **(2013) 16 SCC 31**, while referring the matter to the larger Bench, the Hon'ble Division Bench of the Supreme Court had granted bail to the accused person in that case, I find that in the said case, the accused was inside the prison for more than 9 years as against the sentence of 10 years imprisonment. But, in the instant case, the investigation is at initial stage. Therefore, the judgment relied upon by the learned senior counsel appearing for the petitioner cannot be made applicable to the present facts of the case. The petitioner has not made out any valid ground for granting bail. Hence, the bail petition is liable to be dismissed.

In fine, the criminal original petition fails and the same is dismissed.

22.06.2015

R.SUBBIAH, J.

SSV

Pre-delivery order
in
Crl.O.P.No.11025 of 2015

22.06.2015