



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Thirtieth day of November Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice S.VAIDYANATHAN

CRL OP(MD) Nos.20370 and 20371 of 2016

SRHI MOHAMED SYED MUSTAFA ... PETITIONER/ACCUSED NO.I IN
CRL OP(MD) No.20370 of 2016

SURESHKUMAR ... PETITIONER/ACCUSED NO.3 IN
CRL OP(MD) No.20371 of 2016

Vs

STATE REP.BY ,
THE SUPERINTENDENT OF CUSTOMES
CENTRAL INTELLIGENCE UNIT,
HEAD QUARTERS,
TRICHY DISTRICT
O.R.NO.1 OF 2016 CIU-TRICHY.

... RESPONDENT/COMPLAINANT IN
BOTH THE PETITIONS

For Petitioner : M/S.A.BANUMATHY Advocate IN BOTH THE PETITIONS

For Respondent : MR.C.ARUL VADIVEL @ SEKAR,
SPECIAL PUBLIC PROSECUTOR IN BOTH THE PETITIONS

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioners/accused, who were arrested and remanded to judicial custody on 27.04.2016 and 04.05.2016 respectively for the alleged offences punishable under Sections 8, 21(b), 22(b) and 28 of NDPS Act, 1985 in O.R.No.1 of 2016 CIU-Trichy on the file of the respondent police, seek bail.

2. Heard the learned counsel for the petitioners and the learned Special Public Prosecutor appearing for the respondent police.

3. The case of the prosecution is that on 26.04.2016, the respondent police visited M/s.Sri Renganathan Speed Parcel Service, Trichy and found that one parcel contained Zolfresh tablets, which is a psychotropic substance for transportation to one Abu, Chennai and the said parcel was booked by A1 / petitioner in CrI.O.P.(MD)

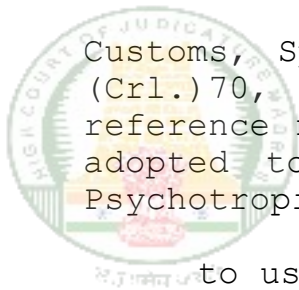


No.20370 of 2016 and on the basis of the confession given by A1, the petitioner in CrI.O.P.(MD) No.20371 of 2016 has been arrested.

4. Learned counsel for the petitioners would submit that the total weight has to be taken into account after excluding the mixture or solution contained in the tablets and if those tablets were calculated in such a way, the quantity would be less than 250gms, which is not a commercial quantity and therefore, the petitioners may be released on bail, as they are undergoing incarceration since 27.04.2016 and 04.05.2016 respectively. Learned counsel for the petitioners also relied upon the judgment of the Apex Court in the case of E. Micheal Raj vs. Intelligence Officer, Narcotic Control Bureau, [Appeal (crl.) 1250 of 2005] decided on 11.03.2008, wherein it has been held as under:

"16. On going through Amarsingh case (supra), we do not find that the Court was considering the question of mixture of a narcotic drug or psychotropic substance with one or more neutral substance/s. In fact that was not the issue before the Court. The black-coloured liquid substance was taken as an opium derivative and the FSL report to the effect that it contained 2.8% anhydride morphine was considered only for the purposes of bringing the substance within the sweep of Section 2(xvi)(e) as 'opium derivative which requires a minimum 0.2% morphine. The content found of 2.8% anhydride morphine was not at all considered for the purposes of deciding whether the substance recovered was a small or commercial quantity and the Court took into consideration the entire substance as an opium derivative which was not mixed with one or more neutral substance/s. Thus, Amarsingh case (supra) cannot be taken to be an authority for advancing the proposition made by the learned counsel for the respondent that the entire substance recovered and seized irrespective of the content of the narcotic drug or psychotropic substance in it would be considered for application of Section 21 of the NDPS Act for the purpose of imposition of punishment. We are of the view that when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance/s, for the purpose of imposition of punishment it is the content of the narcotic drug or psychotropic substance which shall be taken into consideration."

5. Per contra, learned Special Public Prosecutor appearing for the State submitted that the contraband seized weighs more than the commercial quantity and though the strength of Zolpidem in one Zolfresh tablet is 10mg, if it is weighed along with its mixture, it exceeds the commercial quantity. The bail petition filed by the petitioners herein before the Special Court for NDPS Act cases, Madurai in Cr.M.P.No.2315 of 2016 was dismissed on 22.07.2016 on account of huge quantity of contraband involved in the case. Learned Special Public Prosecutor drew the attention of this Court to the judgment of the Hon'ble Division Bench of this Court in the case of M.Veludurain vs. The State, represented by The Superintendent of



Customs, Special Narcotic Cell, Nagercoil, reported in 2012-1-L.W. (Crl.) 70, wherein the Hon'ble Division Bench, pursuant to the reference made by a Single Judge, with regard to the method to be adopted to arrive at the exact quantity of a Narcotic Drug / Psychotropic Substance, has been pleased to hold as under:

"26. In the result, we answer the question, referred to us, as follows:-

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I) If the contraband seized is either a mixture or a preparation with or without a neutral material, of any Narcotic Drug or Psychotropic Substance falling within the scope of entry No.239 of the notification dated 19.10.2001 issued in S.O.No.1055(E) of the Central Government, it is absolutely necessary to conduct Purity Test to ascertain the exact quantity of the Narcotic Drug/Psychotropic Substance contained in the said mixture or preparation. In the absence of Purity Test, as indicated, the contraband seized shall be construed only as a small quantity and accordingly, the accused shall be liable for punishment.

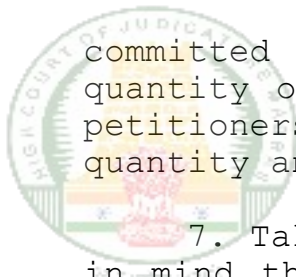
(ii) In the case of a contraband, which is neither a mixture nor a preparation falling within the sweep of entry No.239 and if the contraband is a Narcotic Drug/Psychotropic Substance simplicitor, there is no need for Purity Test and in such cases, the entire quantity of Narcotic Drug/ Psychotropic Substance shall be taken into consideration for deciding as to whether the same is a small quantity or a commercial quantity or an intermediate quantity for the purpose of conviction.

(iii) In pending cases, including appeals, relating to the substances falling within the sweep of entry No.239, the Courts/Prosecuting Agency, may do well by forwarding the samples taken from the remaining contrabands in the custody of the Courts for Purity Test to estimate the percentage of Narcotic Drug/ Psychotropic Substance in the mixture or preparation. In pending Criminal Appeals, the report of Purity Test may be received as additional evidence under Section 391 of the Code of Criminal Procedure.

(iv) If any such request is made in respect of the pending cases, the Laboratory concerned shall give top priority and submit reports without delay.

(v) We make it clear that the ratio laid down in Michael Raj's case, regarding Purity Test and the answers given by us herein above shall be applicable to offences committed on or before 17.11.2009 alone.

6. learned Special Public Prosecutor also brought to the notice of this Court the Lab Report dated 29.08.2016, which shows that each tablet without wrapping or cover weighs 0.198gms and if it is weighed with wrapper, it comes to 23.4gms and as per the decision rendered by the Hon'ble Division Bench of this Court, the ratio laid down in Michael Raj's case, regarding Purity Test and the answers given by the Division Bench above shall be applicable to offences



committed on or after 18.11.2009. Therefore, it is clear that the quantity of Narcotic Drug / Psychotropic Substance seized from the petitioners undoubtedly falls within the definition of commercial quantity and therefore, they should not be granted bail.

7. Taking note of all the factors referred to above and bearing in mind the judgment of the Hon'ble Supreme Court as well as this Court and also the serious nature of the offences alleged against these petitioners, this Court is not inclined to grant bail to the petitioners.

Accordingly, these Criminal Original Petition are dismissed.

sd/-

30/11/2016

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SUPERINTENDENT OF CUSTOMES
CENTRAL INTELLIGENCE UNIT, HEAD QUARTERS, TRICHY DISTRICT

2 THE SPECIAL PUBLIC PROSECTUOR FOR CBI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

+One cc to M/S.C.ARUL VADIVEL @ SEKAR, Advocate, SR.No.74283

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CSL/SKN/SAR-II/20.12.2016: 4P/5C

ORDER

IN

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Date :30/11/2016