

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Sixth day of August Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.DHANDAPANI

CRIMINAL ORIGINAL PETITION No.16500 of 2018

R.SIVARAJ

[PETITIONER / ACCUSED]

vs

THE STATE REP BY ITS,
THE SUPERINTENDENT OF CUSTOMS
PROSECUTION UNIT AIR CUSTOMS HOUSE
RAJAJI SALAI, CHENNAI
RR.NO.13 OF 2018.

[RESPONDENT]

For Petitioner : M/S.REEGAN S.BELL Advocate

For Respondent : MR.M.VENKATESWARAN SPECIAL PUBLIC PROSECUTOR FOR
CUSTOMS CASES.
PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner who was arrested on 25.05.2018 for the offence under Sections 21, 22, 23 and 28 of the NDPS Act, 1985 r/w Section 135, 135(a) (a) of the Customs Act, 1962 in F.No.O.S.No.08 of 2018-PAD-INT (AIR) on the file of the respondent, seeks bail.

2.It is the case of the petitioner that he was called for a formal enquiry by the respondent on 25.05.2018 at 10.30 a.m. and was arrested at 3.00 p.m. on the same day and detained by the respondent without proper interrogation.

3.Perusal of arrest memo reveals that the petitioner attempted to export two parcels of the contraband through speed post without getting export permission from the statutory Authority. The said parcels were recovered by the Intelligence Officer, Courier Intelligence Unit (Air), Custom House, Chennai.

4.The petitioner in this petition has averred that even though the Notification was issued on 26.04.2018 and in the normal course, the publication is sufficient and the Customs Act does not provide for publication in addition to the Notification in the Newspapers, it is contended that there is a requirement for publication in

Newspapers in addition to the Notification to enhance the availability of natural justice.

5.The petitioner further aver that he does not know about the Notification dated 26.04.2018 amendment made to the NDPS Act, just two days earlier to the booking of the pain killer tablets. Without knowing about the Notification, the petitioner sent the courier to foreign country on 28.04.2018. Aggrieved by the arrest, the petitioner filed bail application before the Principal Special Court under EC & NDPS Act, Chennai in CrI.M.P.No.458 of 2018. However, the learned Principal Special Judge vide order dated 22.06.2018 dismissed the bail application. Hence, the petitioner has filed this petition.

6.The learned counsel appearing for the petitioner would submit that the petitioner is a stock holder and distributor of the drugs and cosmetics. The petitioner is also running a Company for the said purpose in the name and style of Magathi Pharma for the past four years and the petitioner is also holding import and export licence.

7.The learned counsel appearing for the petitioner would further submit that the petitioner placed order with one Deep Pharmaceuticals for the pain killer tablets on 20.04.2018 and received its delivery on 25.04.2018. Thereafter, the petitioner sent the same to a customer in USA by speed post which was referred by one Pradeep Diwari from Maharashtra who had communicated the address of customer through mobile phone.

8.The learned counsel appearing for the petitioner would further submit that the petitioner was not aware of the Notification dated 26.04.2018 amendment made to the NDPS Act, just two days earlier to the booking of the pain killer tablets. He would further submit that the allegation of crime said to have been committed by the petitioner is non est in law since there is no public notice with regard to the publishing of the Notification. In support of his contentions, the learned counsel relied upon the decision of this Court reported in **MANU/TN/0045/1984 (Asia Tobacco Company Limited Vs. Union of India and others)**. सत्यमेव जयते

9.The respondent has filed counter stating that on 15.05.2018 at about 15.00 hours, two independent mahazar witnesses were called upon by the Intelligence Officer attached to PAD Intelligence, Customs, Chennai to be present at the Foreign Post Office, Meenambakkam, Chennai - 27 to witness the examination proceedings of Export speed post parcel consignments booked to Joshua Smith, 3000, Custer Rd Ste 270, PO Box 421, Plano Texas 75075, USA vide tracking numbers ET085104850IN and ET085104998IN by the consignor Magathi Pharma, 29/1, Duraisamy Road, T.Nagar, Chennai - 17, to which they readily agreed and presented themselves at Foreign Post Office, Meenambakkam, Chennai - 27.

10.The counter further states that the Customs Officers along with the independent mahazar witnesses visited the second floor of the said premises where the detained parcels were kept and informed the Postal Officials present there at that time about the purpose of

their visit. Thereafter, the Officers requested the Postal Officials for identification of all the consignment booked by Magathi Pharma pending dispatch to USA and were detained by the Customs. The Postal Officials produced two parcels destined for USA. Thereafter the said parcels were brought to the room of the Superintendent of Customs (PAD) located at the first floor of the said premises and the parcels were opened one at a time in the sequence mentioned in Annexure - A of the Mahazar.

11.The counter further states that on preliminary examination, it was noticed that the parcels contained New Royal - 225 tablets containing salts of Tramadol Hydrochloride B.P. The Customs Officers informed the independent mahazar witnesses that the goods/ tablets are covered under the Schedule of NDPS Act, 1985, vide Notification S.O.1761 (E) and the permission to export these consignments from the competent Authority as per the NDPS Act, 1985, was not found with any such consignment.

12.The counter further states that the Notification in question i.e., S.O.1761 and S.O.1762 (E) dated 26.04.2018 were issued by the Department of Revenue and published in the Official Gazette on the same date. From the packing of the tablets contained in the consignments, it appeared that the tablets contained salts/ substances of Tramadol Hydrochloride scheduled under the NDPS Act, 1985, vide Notification S.O.1761 (E).

13.The counter further states that summons were issued under Section 108 of the Customs Act, 1962 to the petitioner. The petitioner appeared before the Intelligence Officer (PAD Intelligence) on 25.05.2018 and deposed his voluntary statement. The petitioner was arrested after following the due process of law.

14.The learned Special Public Prosecutor appearing for Customs after reiterating the contents of the counter submitted that the petitioner Company is dealing with wholesale marketing of pharmaceuticals and cosmetics and are mostly doing domestic transaction. He would further submit that the petitioner Company is exporting food supplements and pharmaceuticals to Sri Lanka. Recently, they were negotiating to get a purchase order from USA for which they tried to export two samples of Royal-225 (Tramadol Hydrochloride) through FPO, Meenambakkam vide tracking numbers ET085104850IN and ET085104998IN but the samples were detained by the Postal Authorities. He would further submit that the petitioner has not exported this product or any similar products to any country in the past. He would further submit that this is their first export of this sample and it was detained by the Postal Authorities.

15.The learned Special Public Prosecutor would further submit that though the petitioner states that he is having IEC Code, GSTN Number and Form-20B and Form-21B, he is not having any other authorization or licence. He would further submit that the petitioner has purchased the tablets from M/s. Deep Pharmaceuticals, Office No.10, 11, Crescent Point Building, Mahim Road, Boisar, Palghar - 401 404, Maharashtra. He would further submit that during

interrogation, it revealed that the petitioner did not know that exporting medicines restricted under NDPS Act without authorization of Narcotics Commissioner is an offence and is restricted under NDPS Act.

16.The learned Special Public Prosecutor would further submit that investigation is in preliminary stage and the Investigating Officer has to examine the other persons who are involved in the export process. Accordingly, he prayed for dismissal of the petition.

17.The issue involved in this case is whether the petitioner is entitled to be enlarged on bail on the ground that the Notification was not published in the public domain and mere issuance of Notification will not constitute offence against the petitioner.

18.Perusal of counter filed by the respondent reveals that the Notification in question i.e., S.O.1761 and S.O.1762 (E) dated 26.04.2018 were issued by the Department of Revenue and published in the Official Gazette on the same date. Admittedly, the consignment was sent through speed post on 28.04.2018 after two days of the Notification.

19.The undisputed facts are that the petitioner is a stock holder and distributor of the drugs and cosmetics. The petitioner is also running a Company for the said purpose in the name and style of Magathi Pharma. Hence, the petitioner must be aware of the Notification issued by the Government of India. Since the petitioner is involved in the business of pharmaceuticals, he cannot wipe out the responsibility of knowing whether permission is granted to export the contraband. It is the duty cast upon the petitioner to verify the same and pleading ignorance before the Court is not permissible.

20.The decision relied upon by the learned counsel appearing for the petitioner is not applicable to the present case on hand. The petitioner in the decision cited was manufacturer of cigarettes. Cigarettes are subject to levy of excise duty under Tariff item f(II) (2) of the Central excise Tariff under manufactured tobacco. There was a partial exemption Notification No.30/79 of Central Excise, dated March 1, 1979 and subsequently, the said Notification was withdrawn and rescinded pursuant to the powers under the relevant Rules.

21.In the present case on hand, the Central Government is the competent Authority to impose ban. Accordingly, the said tablet is covered under the Schedule of NDPS Act, 1985, vide Notification S.O.1761 (E) and necessary permission from the competent Authority has to be obtained to export these consignments as per the NDPS Act, 1985.

22.Further, investigation in this case is at preliminary stage. At this stage, this Court is not inclined to grant bail to the petitioner. Accordingly, this criminal original petition is dismissed.

-sd/-

06/08/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE STATE REP BY ITS,
THE SUPERINTENDENT OF CUSTOMS
PROSECUTION UNIT AIR CUSTOMS HOUSE
RAJAJI SALAI, CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON PUZHAI-II,
CHENNAI

+2 CC to M/S.REEGAN S.BELL Advocate on payment of necessary
charges SR.NO. 14631

सत्यमेव जयते

CRL OP.16500/2018

Date :06/08/2018

RD 14/08/2018

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