



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

Monday, the Nineteenth day of March Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP(MD) No.2571 of 2018

L.ABUTHAHIR

... PETITIONER/ACCUSED No.2

Vs

THE SUPERINTENDENT OF CUSTOMS CENTRAL INTELLIGENCE UNIT,
O/O THE COMMISSIONER OF CUSTOMS,
TRICHY

... RESPONDENT / COMPLAINANT

For Petitioner : M/S.M.VENKATESWARAN Advocate

For Respondent : MR.C.ARULVADIVEL @ SEKAR

Special Public Prosecutor for Customs

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

ORDER : The Court Made the following order :-

The petitioner/Accused No.2, who was arrested and remanded to judicial custody on 29.04.2016 for the offences punishable under Sections 8(c), 22(c), 27(A), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter referred to as 'the NDPS Act'], r/w. Rules 65(A), 66 and 67 of the Narcotic Drugs and Psychotropic Substances Rules, 1985, [hereinafter referred to as 'the NDPS Rules'] in O.R.No.1 of 2016, on the file of the respondent police, seeks bail.

2.Admittedly, the first accused in this case is the Consignor and the petitioner herein/A2 is the Consignee.

3.The case of the prosecution is that during the search made in M/s.Shri Renganathan Speed Parcel Service, No.8, Nirmala Building, Fort Station Road, Trichy, one parcel was found, which was booked by Shri Mohammed Syed Mustafa/A1, Trichy, to be transferred to the petitioner herein, mentioning Mobile No.9043617533, containing 13 boxes of Zolfresh 10 x 10 x 10 Tablets, totally 13,000 tablets of 10 Mgs. along with Invoice No.77573, dated 23.04.2016. The said contraband materials were recovered in the presence of two witnesses. According to the Investigating Agency, the recovered contraband materials [Zolfresh Tablets] containing 'Zolpidem', was a psychotropic substance prescribed under Sl.No.109 of Schedule to the NDPS Act. According to the prosecution, the total weight of



Zolpidem containing in 13,000 Zolfresh Tablets is 2 Kgs., which is a commercial quantity as per the NDPS Act.

4. Previously, after registration of the case, the petitioner was granted with bail on 05.08.2016 by the Trial Court and thereafter, as per the order passed by this Court, dated 23.08.2016, in CrI.O.P.(MD)No.14252 of 2016, the bail granted to the petitioner was cancelled. Again, the petitioner filed another one application before this Court. During the time of considering the said application, it was mentioned on the side of the petitioner as the petitioner was seriously ill in the Central Jail and therefore, in order to take treatment, he was released on bail on 15.09.2017. Subsequent to that, on 20.12.2017, this Court cancelled the said order and dismissed the bail application filed by the petitioner.

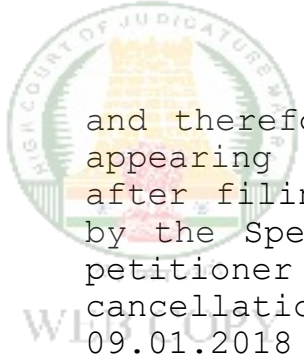
5. Aggrieved over the said dismissal order passed by this Court in CrI.O.P.(MD)No.23400 of 2016, dated 20.12.2017, the petitioner has preferred SLP(CrI.)No.53 of 2018 before the Hon'ble Supreme Court and the same was also dismissed on 09.01.2018 with a direction to surrender before the Trial Court immediately.

6. The learned counsel appearing for the petitioner contended that the dosage of 10 Mgs. of codeine phosphate in each 100 ml. bottle would fall within the permissible limit as stipulated in the Notification, dated 14.11.1985 and 29.01.1993 and therefore, this Court cannot taken into account that the petitioner had possession of the contraband material, which comes under the category of commercial quantity.

7. Per contra, the learned Special Public Prosecutor appearing for Customs submitted that the said submission made by the learned counsel appearing for the petitioner was already made before the Hon'ble Supreme Court, but the same was negated by the Hon'ble Supreme Court and therefore, the entire quantity of the medicine are meant for consumption and the same would certainly fall within the penal provisions of the NDPS Act.

8. Now, considering the submissions made by the learned counsel appearing on either side, it is true that the Hon'ble Supreme Court in a case of **Md.Sahabuddin and another Vs. State of Assam** [CrI.A.No.1602 of 2012], has answered the issue in favour of the prosecution and therefore, this Court is not in a position to entertain the submission made by the learned counsel appearing for the petitioner. Secondly, the learned counsel representing the petitioner submitted that the entire contraband materials were not recovered through this petitioner and therefore, the petitioner is entitled for the relief of bail as prayed in the petition.

9. Considering the abovesaid submission with the case on hand, in the parcel, the petitioner's name alone was mentioned in the space provided for mentioning the Consignee address. In order to deny the said fact, the petitioner has not submitted any document



and therefore, the second contention raised by the learned counsel appearing for the petitioner, is also negatived. Moreover, even after filing charge sheet in this case and after taking cognizance by the Special Court, this Court has granted interim bail to this petitioner and the same was subsequently cancelled and the said cancellation order was confirmed by the Hon'ble Supreme Court on 09.01.2018 and therefore, even after knowing the fact that the Hon'ble Supreme Court was not inclined to grant bail to the petitioner, allowing this application is nothing but against the view taken by the Hon'ble Supreme Court. Accordingly, in order to hold the submission made by the learned counsel appearing for the petitioner, elaborate discussion is not necessary. Hence, this Criminal Original Petition is dismissed.

sd/-
19/03/2018

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

TO

- 1 THE SUPERINTENDENT OF CUSTOMS CENTRAL INTELLIGENCE UNIT,
O/O THE COMMISSIONER OF CUSTOMS, TRICHY
- 2 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1. CC to M/S.M.VENKATESWARAN Advocate SR.No.4293

+1 cc to MR.C.ARUL VADIVEL @ SEKAR, Advocate SR.No.4304

ORDER
IN
CRL OP(MD) No.2571 of 2018
Date :19/03/2018

SMA/CM-VR/SAR-1/21.03.2018:3P/6C