



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

Tuesday, the Thirteenth day of November Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.16591 of 2018

M.KUBENDIRAN

... PETITIONER/ACCUSED

RANK NOT KNOWN

Vs

STATE THROUGH,
THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
MADURAI SUB ZONE,
MADURAI (IN F.NO. 48/1/08/2018)

... RESPONDENT

For Petitioner : MR.R.SURESHKUMAR, Advocate

For Respondent : MR.ARUL VADIVEL @ SEKAR,
SPECIAL PUBLIC PROSECUTOR FOR NCB

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

[Orders Reserved on 09.11.2018]

The petitioner, who apprehends arrest at the hands of the respondent Police for the alleged offences punishable under Sections 8(C) r/w. Section 22(c), 27-A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, in Crime No.F.No.48/1/08/2018, seeks anticipatory bail.

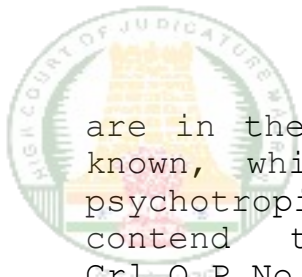
2. The case of the prosecution is that on 03.07.2018, one Perumal, who is arrayed as A1, was in possession of 107100 no.s of pale orange colour Becalm 0.5 Alprazolam Tablets I.P 0.5 mg, weighing 10.71 Kgs and 97 no.s of K-COD Cough Syrups, containing Codeine Phosphate were seized by the respondent and based on his confession, involvement of the petitioner was revealed. Petitioner was summoned under Section 67 of NDPS Act, to attend the enquiry on 03.09.2018, vide proceedings, dated 23.08.2018, petitioner failed to respond and appear for enquiry.

3. Mr.M.Sureshkumar, the learned counsel appearing for the petitioner would submit that the petitioner is being roped in as accused on the confession statement of one of the accused, who had given a statement under Section 67 of the NDPS Act, from whom, illicit trafficking of 107100 no.s of pale orange colour Becalm 0.5 Alprazolam Tablets I.P 0.5 mg, weighing 10.71 Kgs and 97 no.s of K-



COD Cough Syrups, containing Codeine Phosphate, incriminating documents and material objects, have been seized at M/s.Sivasri Medicals, NRT Nagar, Theni Allinagaram, Tamil Nadu- 625531, on 03.07.2018. Adding further, he would submit that the petitioner cannot be held guilty primarily on confession of a co-accused without there being any substantive piece of evidence. In the absence of any substantive evidence, it would be inappropriate to base the conviction of the petitioner purely on the confession statement of co-accused. The learned counsel, in support of his contentions, has relied upon a decision of Hon'ble Supreme Court in **Baljit Singh Vs. State of Assam** reported in **(2004 (3) Crimes 433)**, to sustain his argument that anticipatory bail application is maintainable for the offences under NDPS Act. Further, he also relied upon on a decision of the Hon'ble Apex Court in **Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence** reported in **(2018) 3 MLJ (Crl) 753 (SC)**, with regard to reliance of confessional statement of a co-accused cannot by itself to be taken as a substantive piece of evidence against another co-accused. Further, the learned counsel relied upon a decision of this Court made in **Crl.O.P.No.11909 of 2018, dated 01.08.2018**, wherein, this Court has granted the relief of anticipatory bail to the petitioner therein. He also submits that the earlier anticipatory bail application filed by the petitioner in Crl.O.P(MD) No.11440 of 2018 has been dismissed as withdrawn, on 30.07.2018. The petitioner, on receipt of summons from the respondent, under Section 67 of the NDPS Act to attend the enquiry on 03.08.2018 had filed the above petition, for anticipatory bail.

4. Mr.Arul Vadivel @ Sekar the learned Special Public Prosecutor for NCB, has filed a counter wherein detailed the role played by this petitioner in commission of the offence. He submitted that the petitioner owns two medical shops one in Kullapuram and one in Theni. The petitioner has been selling Alprazolam tablets illegally to School and College students, without bill, for high profit. Further, one Perumal / A1 in this case, in a statement under Section 67 of the Act, had clearly stated about the petitioner's involvement in sale of the psychotropic drugs. According to the said Perumal / A1, the petitioner is known to him from very young age and they are good friends and on his advice only, the petitioner started selling psychotropic drugs for the past one year. He would further submit that the petitioner's involvement in similar sale and transactions in the Districts of Madurai, Virudhunagar and Theni are to be ascertained. It is a big racket and there are materials to show the involvement of the petitioner in some of the transactions. He also submitted that the petitioner was summoned on 23.08.2018 to appear before the Investigating Officer on 03.09.2018, for his examination for which, he did not turn up. Further summons was issued on him, on 18.09.2018, to appear on 03.10.2018. Failing to appear for the summons and avoiding his examination would show the criminal mind of the petitioner. The quantity seized is more than the commercial quantity and on examination of the petitioner only, the facts which



are in the exclusive knowledge of the petitioner would come to be known, which might lead to unearth the big racket of sale of psychotropic drugs to the students and youth. He would further contend that in respect of decision of this Court in Crl.O.P.No.11909 of 2018, dated 01.08.2018 is concerned, it pertains to a wholesale dealer, who had dealt with the drug under proper documents, which is not the case of the petitioner herein.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. Considering the above facts and circumstances of the case and the submissions made by the learned counsels appearing on either side and keeping in view the seriousness and gravity of the offence and as rightly contended by learned Special Public Prosecutor for NDPS Act Cases that the quantity of psychotropic substances seized is more than the commercial quantity and on examination of the petitioner only, the facts which are within the exclusive knowledge of the petitioner would come to be known, which might lead to unearth the big racket of sale of psychotropic drugs, this Court is not inclined to grant anticipatory bail to the petitioner, at this stage. Hence, this Criminal Original Petition stands dismissed.

sd/-

13/11/2018

/ TRUE COPY /

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

TO

- 1 THE INTELLIGENCE OFFICER
NARCOTICS CONTROL BUREAU,
MADURAI SUB ZONE, MADURAI
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to MR.R.SURESHKUMAR Advocate SR.No.21424

ORDER

IN

CRL OP(MD) No.16591 of 2018

Date :13/11/2018

MPK

PK/JC/SAR-4/15.11.2018 : 3P/4C