

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Sixth day of September Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL ORIGINAL PETITION No.10313 of 2019

ALEXANDER VYUKHIN @ ALEX

[PETITIONER / ACCUSED]

Vs

THE INTELLIGENCE OFFICER
NCB SOUTH ZONAL UNIT,
CHENNAI-600 090.

[RESPONDENT]

For Petitioner : M/S.MAMTA PANDEY, Advocate

For Respondent : M/S.N.P.KUMAR, Special Public Prosecutor,
for NDPS, Cases

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who was arrested on 27.09.2011 for the offences punishable under Sections 8-C, 22, 23, 27-A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity "the NDPS Act") in C.C.No.15 of 2012 on the file of the I Additional Special Court under the NDPS Act, Chennai, seeks bail.

2. The facts of the case are as under:

2.1 On 21.09.2011, the Office of the Narcotics Control Bureau intercepted 35 articles at the Speed Post Concentration Centre, St. Thomas Mount Post Office and on checking the same, they found strips of Pentamine capsules (Mazindol), which is a psychotropic substance and seized the same under a cover of mahazar.

2.2 From the addresses found in the envelopes and from other sources, the officers searched the premises of one Shankar @ Sekar at Villupuram and found that he has been receiving psychotropic substances from the petitioner for onward transmission to foreign countries. Money trail was also noticed by the officers while examining the bank accounts of Shankar @ Sekar. Thereafter, the officers searched the premises of Alexander Vyukhin @ Alex, the petitioner herein, (for brevity "Alex") a Russian national and seized several items such as netbook, PAN card, credit cards, bank documents,

one 50 gm. gold bar of 24 carats 999.9 issued by ICICI Bank, mobile phones, pen drive, Russian and Indian currencies and three aluminium foil pouches with the inscriptions "Bromasepam Tablets", Pentertine IP 37.5 mg and Oxazepam tablets.

2.3 The statement of Alex was recorded under Section 67 of the NDPS Act, wherein, he has stated his involvement in procuring, financing and exporting of psychotropic substances to the USA and UK through Shankar @ Sekar.

2.4 Both Shankar @ Sekar and Alex were arrested and they were produced before the Remanding Magistrate, Saidapet on 28.09.2011. The laptop and other items which were seized from Alex were examined by experts and further arrests were made by the officers and further searches were conducted by the officers at the residence of (1) Natarajan (A3)-Manager, Velan Pharma, Madurai, (2) K. Hemanth Kumar Munot (A4)-Proprietor, Munot Pharmaceuticals, Chennai and Ranjit Kumar (A5)-Proprietor, Reliable Pharma, Chennai and Mohamed Manzur (A6), Proprietor, J.J. Pharmacy, Villupuram.

2.5 After completing the investigation, the Narcotics Control Bureau filed a complaint before the I Additional Special Court under the NDPS Act, Chennai and the same has been taken on file as C.C. No.15 of 2012 for the offences under Sections 22, 23, 27A, 28 and 29 of the NDPS Act and Rule 58 of the NDPS Rules.

2.6 The present petition is the fourth bail petition before this Court and the earlier bail petitions have been dismissed by this Court on merits. The last of such petition has been dismissed by me in CrI.O.P.No.10256 of 2017 on 21.07.2017, against which, the petitioner filed S.L.P.No.3900 of 2018, in which, the Supreme Court passed the following order on 27.04.2018:

"Delay condoned.

In the course of hearing of the special leave petition, it has been brought to our notice that the High Court of Judicature at Madras has granted stay in Criminal Miscellaneous Petition Nos.11337 and 12223 of 2016 in CrI.R.C.No.1259 of 2016 as a result of which the trial has not progressed. It has also been urged that the petitioner has remained in custody for more than seven years. Be that as it may, as the offence is under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, we are not inclined to set aside the order of the High Court refusing to grant bail to the petitioner. However, we request the High Court to dispose of Criminal Miscellaneous Petition No.11337 and 12223 of 2016 in CrI.R.C.No.1259 and 1398 of 2016 within three months hence. After the High Court disposes of the matter, the Trial Court shall conclude the trial within six months therefrom.

The special leave petition stands disposed of accordingly."

3. The learned counsel for the petitioner submitted that a learned Single Judge of this Court (Mr. Justice M.V. MURALIDARAN) has allowed CrI.R.C.No.1259 & 1398 of 2016, thereby discharging M.Ranjith Kumar (A5) and J.Mohamed Manzur (A6) from the prosecution in C.C.No.15 of 2012 and that is the change in circumstances for filing this fourth bail application.

4. Mr.S.Veeraraghavan, learned Senior Counsel representing Mrs.Mamta Pandey, learned counsel on record for the petitioner submitted that the petitioner being a Russian national is languishing in jail for the last eight years without any progress in the trial and all the co-accused in this case have been released on bail.

5. Per contra, the learned Special Public Prosecutor submitted that the delay in disposal of the trial was mainly on account of the petitioner taking a stand that he was mentally unsound and filed petitions in the Trial Court and in the High Court for declaring him as insane. He further submitted that the petitioner has filed a discharge application and was adopting dilatory tactics by not arguing the same before the Trial Court.

6. This Court gave its anxious consideration to the rival submission.

7. The case of the petitioner is not on the same footing as that of the co-accused who were granted bail. In fact, this Court while granting bail to the co-accused, has distinguished the case of the petitioner and Shankar @ Sekar. Those who were granted bail were pharmacy retailers, from whom, Shankar @ Sekar and the petitioner had purchased huge quantities of psychotropic substances for over a period of time and were exporting them to foreign countries. Shankar @ Sekar was also not granted bail, but, he committed suicide in the jail by hanging on 18.03.2013.

8. This Court is constrained to place on record a disquieting feature in this case. The Apex Court, by order dated 27.04.2018, has directed the Trial Court to complete the trial of the case within six months after the disposal of the criminal revision petitions filed by the co-accused in the High Court. The Trial Judge has addressed a communication dated 03.07.2019 to the Apex Court seeking extension of time, on which, the Supreme Court has passed the following order on 30.07.2019:

"In view of the letter dated 3rd July 2019 of the Judge, I Additional Special Court constituted exclusively for the trial of case under NDPS Act, Chennai, Tamil Nadu, time for conclusion of the trial is extended, as prayed, by a period of six months from today."

9. On 26.08.2019, when the matter came up before the Trial Court, the petitioner was produced, but Mr.S.Veeraraghavan, learned Senior Counsel representing the learned counsel on record for the petitioner appears to have argued that the Trial Court should not "touch the bundle". The adjudication on 26.08.2019 is extracted below:

"Presentee : Intelligence Officer NCB
N.P.Kumar
Alexander Vyukhin @ Alex
K.Hemanth Kumar Munot

Business : A2 produced. A3 absent 317 Cr.P.C.
petition filed and allowed. A4 present.
Heard the learned Senior Counsel Mr.Veeraragavan
on behalf of the counsel appearing for A2. The
learned Senior Counsel advanced a lengthy arguments
with a contention that this Court is not empowered
to touch the bundle as the Hon'ble High Court
reserved orders in the petition filed by A2. No
stay was granted by the Hon'ble High Court. As per
the order of the Hon'ble Apex Court dated
31.07.2019, this court has to complete the trial
within six months. Except A2, the counsel appearing
for A3, A4 already advanced arguments regarding
framing of charges. The entire records are to be
gone into before deciding on the arguments advanced
by the learned Senior. Hence, adjourned to
27.08.2019. Remand of Accused 2 extended
till then.

Next purpose : Framing of charges
Next Hearing Date : 27.08.2019"

10. A reading of the above adjudication shows that Mr.Veeraraghavan, learned Senior Counsel has represented to the Trial Court that this Court has reserved order and therefore, the Trial Court should not touch the bundle.

11. This Court had reserved order only in the bail petition and nothing else. This Court has not granted stay of the Trial Court proceedings. When that being so, the representation of the learned Senior Counsel to the Trial Court that the bundle should not be touched is not in good taste. The Trial Court has to follow the directions of the Supreme Court and complete the trial within six months. Even, while in custody if the petitioner could adopt such dilatory tactics by not allowing the Trial Judge to even frame the charges, if bail is granted, he being a foreigner, will vanish in thin air.

12. That apart, the petitioner does not qualify the twin test laid down under Section 37 of the NDPS Act for being entitled to bail.

In the result, this petition is dismissed.

-sd/-
06/09/2019

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 INTELLIGENCE OFFICER
NCB SOUTH ZONAL UNIT,
CHENNAI-600 090.

2 THE SPECIAL PUBLIC PROSECUTOR FOR NDPS CASES,
HIGH COURT, MADRAS.

3 THE I ADDITIONAL SPECIAL
JUDGE, UNDER THE NDPS ACT, CHENNAI.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

CC to M/S.MAMTA PANDEY Advocate on payment of necessary charges

CRL OP.10313/2019

Date :06/09/2019

TA-18/09/2019

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