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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 09/07/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD). No.9141 of 2019

Solaippan

... Petitioner/Accused

Vs

State rep. by
The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone, Madurai.
Ncb F.No.48/1/03/2019/ncb/mdu.

... Respondent/Complainant

For Petitioner : M/s.K.Gokul,
Advocate.

For Respondent : Mr. Arul Vadivel @ Sekar,
Spl. Public Prosecutor

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

PRAYER :-

For bail petition in Cr.MP.No.204 of 2019 on the file of the Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai.

ORDER : The Court Made the following order :-

This petition has been filed by the petitioner/ accused seeking bail for the alleged offence under Section 8(C) R/W.Sec.21,28 and 29 of N.D.P.S Act, 1985.

2. Heard both sides

3. The learned counsel for the petitioner would submit that the petitioner herein has been falsely implicated in the above case. He further submitted that the petitioner herein was arrested and remanded to judicial custody on 26.04.2019 and he is in custody for the past 73 days. He would also submit that the petitioner is affected by sugar and blood pressure and he is taking treatment. Therefore he prayed to grant bail to the petitioner.



4. The learned Special Public Prosecutor would submit that the petitioner was found in possession of 95 bottles each containing 100ml Eskuf codeine cough syrup. He would further submit that 1 Kg of codeine phosphate or any mixture containing codeine Phosphate is considered as commercial quantity as per the Notification No.S.O. 527(E) dated 16.07.1996 issued by the Ministry of Finance, Department of Revenue and therefore the petitioner is not entitled for bail under Section 37 of the N.D.P.S. Act.

5. The learned Special Public Prosecutor also relied upon the decision of **Md.Sahabuddin and Anr -vs- State of Assam(Criminal Appeal No.1602 of 2012 arising out of SLP (Crl.) No.5503 of 2012 dated 05.10.2012**, wherein the Hon'ble Supreme Court has held as follows:

"It is not in dispute that each 100 ml bottle of Phensedyl Cough syrup contained 183.15 to 189.85 mg of codeine phosphate and the each 100 ml bottle of Recodex cough syrup contained 182.73 mg of codeine phosphate. When the appellants were not in a position to explain as to whom the supply was meant either for distribution or for any licensed dealer dealing with pharmaceutical products and in the absence of any other valid explanation for effecting the transportation of such a huge quantity of the cough syrup which contained the narcotic substance of codeine phosphate beyond the prescribed limit, the application for grant of bail cannot be considered based on the above submissions made on behalf of the appellants".

6. The learned Special Public Prosecutor also relied upon the decision of **Ashraf Ali -Vs- The Superintendent of Customs (Crl.O.P (MD) No.1168 of 2017)**, where in this Court in para.9 has held as follows:

'9.After insertion of Note(4) to the Entry 239 of the Table annexed to the NDPS Act vide S.O.No.2941(B),dated 18.11.2009, any mixture or preparation of with or without neutral material of any of the above products, it is not just its pure content but the entire mixture or any solution or any one or more narcotic drug or psychotropic substances of that particular drug has to be taken as a whole"

6. So, in view of the aforesaid decision, after insertion of Note(4) to the Entry 239 of the Table annexed to the NDPS Act vide S.O.No.2941(B),dated 18.11.2009, any mixture or preparation of with or without neutral material of any of the above products, it is not just its pure content but the entire mixture or any solution or any one or more narcotic drug or psychotropic substances of that particular drug has to be taken as a whole.

7. Therefore this Court finds no reason to release the



petitioner on bail, since his case fails to satisfy the twin test laid down under Section 37 of the NDPS Act.

8. Hence the bail petition is dismissed.

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09/07/2019

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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 SUPERINTENDENT, CENTRAL PRISON, TRICHY.
 - 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to M/S.C.ARUL VADIVEL @ SEKAR, Advocate SR.No.11510

ORDER
IN
CRL OP(MD) No.9141 of 2019
Date :09/07/2019

AAV
JMN/JC/SAR-2/24.07.2019/3P-5C