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Madurai. F.No.48/01/081-NCB, MDU.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date on which reserved : 02/08/2019

Date on which pronounced : 19/08/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) Nos.9981 and 10492 of 2019

M.Kubendran

... Petitioner/2nd Accused
IN CRL OP(MD)No.9981 of 2019

S.Perumal

... Petitioner/A-1
IN CRL OP(MD)No.10492 of 2019

Vs

The State of Tamil Nadu,
Represented by the Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai.
F.No.48/01/081-NCB, MDU.

...RESPONDENT/COMPLAINANT
IN CRL OP(MD)No.9981 of 2019

The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai.

...RESPONDENT/COMPLAINANT
IN CRL OP(MD)No.10492 of 2019

For Petitioner : M/s.R.Balakrishnan, Advocate
IN CRL OP(MD)No.9981 of 2019

For Petitioner : M/s.S.Siva Ilayaraja, Advocate
IN CRL OP(MD)No.10492 of 2019

For Respondent : Mr.C.Arul Vadivel @ Sekar,
Special Public Prosecutor for NCB Act Cases
In both petitions

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

COMMON PRAYER :-

To enlarge the petitioners on bail in connection with the case
in Crime No.F.No.48/01/08/1-NCB, MDU on the file of the respondent.

<https://hcservices.ecourts.gov.in/hcservices/>



COMMON ORDER : The Court Made the following order :-

Crl.O.P. (MD) .No.9981/2019:

The petitioner/accused No.2, who surrendered and remanded to judicial custody on 16.11.2018, for the offences punishable under Sections 8(C) r/w 22(C), 27-A, 28 and 29 of the NDPS Act in F.No.48/01/08/1-NCB, MDU, on the file of the respondent Police, seeks bail.

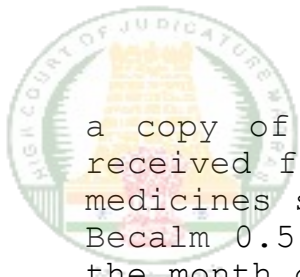
Crl.O.P. (MD) .No.10492 of 2019

The petitioner/accused No.1, who was arrested and remanded to judicial custody on 04.07.2018, for the offences punishable under Sections 8(C) r/w 22(C), 27-A, 28 and 29 of the NDPS Act in F.No.48/01/08/1-NCB, MDU on the file of the respondent Police, seeks bail.

2.The respondent has filed counter affidavits opposing these petitions.

3.(i)The case of the prosecution is that based on specific information, the Officers of Narcotic Control Bureau (NCB), Madurai Sub Zone, went to M/s.Siva Sri Medicals located at Gandhiji Road, Madurai-Theni Main road, Theni on 03.07.2018. In the first floor of the said building, a room was in exclusive possession of one S.Perumal (A-1), who voluntarily opened the room, which was found having huge quantity of Alprazolam Tablets, a psychotropic substance under the NDPS Act and 97 bottles of K-COD Cough Syrups, containing Codeine Phosphate, a manufactured narcotic drug under NDPS Act and they were seized by the Officers of NCB. In the course of investigation, A-1 was arrested on 04.07.2018 and he revealed that huge quantity of Narcotic Drugs and Psychotropic substance were procured and concealed illegally to sell to school and college students to obtain unlawful gain with the constant aid and assistance and abetment of one Kubendran (A2) and the same was recorded under Section 67 of the NDPS Act. On 16.11.2018, the said Kubendran had surrendered before the Special Court for NDPS Act Cases, Madurai in the instant case. Accordingly, a petition was moved before the said court for custodial interrogation of the said Kubendran on 22.11.2018. It was allowed and custody was given to the respondent on 26.11.2018.

(ii)During custody, the said Kubendran was examined under Section 67 of the NDPS Act and he voluntarily gave a statement, wherein, he admitted that he supplied around 300 bags of Becalm 0.5 mg Alprazolam tablets to Perumal (A-1) in different lots during January 2018 to June 2018, which was procured from one Pushpa Pharma, Villapuram. Accordingly, the Proprietor of Pushpa Pharma viz., Shri Subramani Rajthilak was summoned and examined under Section 67 of the NDPS Act and he confirmed that he had been supplying Becalm tablets to A-2 under the proper bill in the name of Shri Hari Medicals owned by A-2. Shri Subramani Rajthilak submitted



a copy of the bank account statement indicating that payment was received from A-2 and bills of Becalm Alprazolam Tablets and other medicines supplied to Sri Hari Medicals of A-2. The seized batch of Becalm 0.5 Alprazolam tablets i.e AKT2968 & AKT2807 was supplied in the month of June 2018 by Pushpa Pharma to Sri Hari Medicals of A-2, who illegally diverted the same to A-1, without bill. Thereby, both the accused have committed the offences punishable under Sections 8 (C) r/w 22(C), 27-A, 28 and 29 of the NDPS Act.

3.The learned counsel for the petitioners has submitted that the petitioners have not committed any offence as alleged by the prosecution. He further submitted that the alleged contrabands were stored at Siva Shri Medicals, where the accused No.1 was working only as an employee and he is not the owner of the said Medical Shop, but in order to save some vested interest, A1 made scapegoat. He further submitted that the owner of the said Medical Shop has not been arrayed as accused and the entire case is a cooked up one. He further submitted that A-1 studied only upto 5th standard, he has not committed any offence. He further submitted that the respondent has served summons to A-1 for his appearance on 04.07.2018 and accordingly, A-1 promptly appeared before the respondent and he was arrested and remanded to judicial custody.

4.The learned counsel for the petitioners has further submitted that on knowing the fact that the aforesaid case has been registered against A-2, he himself voluntarily surrendered before the Principal Special Court for EC and NDPS Act Cases, Madurai on 16.11.2018 and he was remanded to judicial custody. He further submitted that the respondent, by filing application before the Special Court has taken custody of A-2 and interrogated him. He further submitted that the respondent has obtained statements from the petitioners by exercising force and the petitioners have not given statements voluntarily, as alleged by the prosecution and hence, the said statements cannot be used against the petitioners.

5.The learned counsel for the petitioners has further submitted that A-2 got valid licence to sell, stock or exhibit or offer for sale or distribute by wholesale drugs other than those specified in Schedule C, C(1) and X and therefore, he has not committed any offence. He further submitted that A-1 is in custody for more than 13 months and A-2 is in custody for more than 9 months. He further relying upon the decision in **Abdulla @ Abdul Muthalif @ Mannadi Abdullah Vs State 2019 (2) MWN (Cr.)439**, contended that no one shall be confined to jail for more than a reasonable period, which is not normally exceeding one year as an under-trial prisoner facing trial.

6.The learned counsel for the petitioners in support of his contentions also relied upon the following decisions:-



i) **K.S.Packiyaraj Vs. The Intelligence Officer, Narcotics Control Bureau, Madurai Sub-Zone, Madurai (Crl.O.P.(MD).No.16695 of 2018, dated 02.11.2018)**

ii) **Syed Musafar Sadiq and others Vs. The Intelligence Officer, Directorate of Revenue Intelligence (DRJ), Chennai, (Crl.R.C.No.1575 of 2017, dated 25.06.2018)**

7.Per contra, the learned Special Public Prosecutor who is appearing for the respondent has submitted that the petitioner in Crl.O.P.(MD).No.10492 of 2019 (A1) was working in Siva Sri Medicals for the past 6 six years and considering his experience, the owner of the said shop Smt.L.Sunitha, who is also owner of the building in which the Siva Sri Medicals is housed, has made the A-1 as an incharge of the said shop, as she has another shop in Periyakulam. He further submitted that A-1 gave statement voluntarily under Section 67 of the NDPS Act in which he has admitted that he has been placed incharge of the said medical shop and he used to purchase Becalm 0.5 mg Alprazolam tablets, a psychotropic substance under NDPS Act and K.COD Cough syrup containing Codeine Phosphate, a narcotic drug under NDPS Act from the petitioner in Crl.O.P.(MD).No.9981 of 2019 (A2) and stored in a room situated at the first floor of the above M/S.Siva Sri Medicals, NRT Nagar, Theni Allinagaram, Tamil Nadu and illegally sold to the school and college students. He further submitted that on 03.07.2018, a search has been made in the room which is situated in the first floor of the building wherein M/S.Siva Sri Medicals is housed which is in exclusive possession of A1 and found 1,07,100 Becalm Alprazolam tablets assuming to be 10.710 kg and 97 bottles of 100 ml K.COD Cough Syrup containing Codeine Phosphate purported to be 9.7 litre were stored illegally and hence, they were seized under a mahazar.

8.The learned Special Public Prosecutor further submitted that based on the statement given by A1 under Section 67 of the NDPS Act, A2 has been arrayed as accused. He further submitted that A-2 also gave a statement under Section 67 of the NDPS Act admitting that he has sold the aforesaid contrabands to A1 without bill and thereby both the accused have committed offence punishable under NDPS Act. He further submitted that even though A-2 got licence to sell, stock or exhibit or distribute by whole sale, Drugs other than those specified in Schedules C, C(1) and X, as per the condition No.4 of the said licence, no sale of any drug shall be made for the purpose of resale to a person not holding the requisite licence to sell the drug. He further submitted that A2 has sold the aforesaid drugs to A1, who is not having any licence to sell the drugs. He further submitted that the aforesaid seized quantity comes under the category of commercial quantity and that the petitioners have not made out a case for getting bail. He further submitted that after dismissal of the earlier bail applications, there is no change of circumstance and hence, he strongly opposed these petitions.

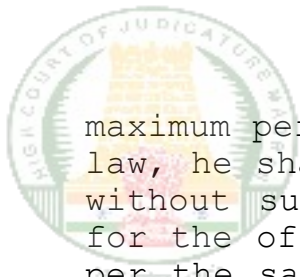


9. In **Abdulla @ Abdul Muthalif @ Mannadi Abdullah Vs State (cited supra)**, the petitioner therein, who was arrested and remanded to judicial custody on 18.06.2014, for the offences punishable under Sections 341, 307 and 302 I.P.C and Section 16(1)(a), 17 and 18 and 20 of Unlawful Activities (Prevention) Act, 1967, in Cr.No.746/2014, on the file of the respondent therein, filed a Criminal Original Petition seeking bail. In that case, the learned counsel for the petitioner relying upon the decisions of the Hon'ble Supreme Court in **Shaheen Welfare Association Vs. Union of India and others, 1996 SCC (Cr1) 366** and **Kadra Pehadiya and Others Vs. State of Bihar 1981 (3) SCC 671** contended that the petitioner therein already suffered incarceration for nearly 4½ years and he should not be made to suffer the pre-trial arrest, and the same will be in violation of Article 21 of the Constitution of India. The learned Judge of this Court has held that in view of the decision of the Hon'ble Supreme Court in **Shaheen Welfare Association Vs. Union of India (cited supra)**, the petitioner therein does not fall in the category of a hardcore under-trial. Further, while referring to the decision of the Hon'ble Supreme Court in **Kadra Pehadiya and others Vs State of Bihar (cited supra)**, in paragraph No.25, the learned Judge has observed as follows:-

"25. It is also important to take note of the judgment of the Hon'ble Supreme Court in **Kadra Pehadiya and others Vs State of Bihar** referred supra, wherein, it was held that no one shall be allowed to be confined to jail for more than a reasonable period of time, which should not normally exceed one year, as an under-trial Prisoner facing Sessions Trial".

10. But, here, the petitioners are not facing sessions trial. The petitioners herein are facing trial under the NDPS Act for having possession of commercial quantity of the psychotropic substance and narcotic drugs. Further in the aforesaid decision, the Hon'ble Supreme Court has made the aforesaid observation based on the earlier decision in **Hussainare Khatoon's case (1980) 1 SCC 81**, but finally, in that case, the Hon'ble Supreme Court had called for particulars from the High Court and also State of Bihar as to how many prisoners there are who have been in the jails in the State of Bihar for more than 12 months after the committal of their cases to the Court of Session and adjourned the matter to some other date. No final order was passed in the said decision.

11. It is also to be pointed out that Section 436-A of Cr.P.C has been inserted by Act 25 of 2005 with effect from 23.06.2006. As per the said provision, where a person has, during the period of investigation, inquiry or trial under the Cr.P.C of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law), and is under detention for a period extending upto one-half of the



maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties. In this case, the petitioners are facing trial for the offence punishable under Section 22(C) of the NDPS Act. As per the said provision, where the contravention involves commercial quantity, the said person shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine. Therefore, the aforesaid decision will not help the petitioners.

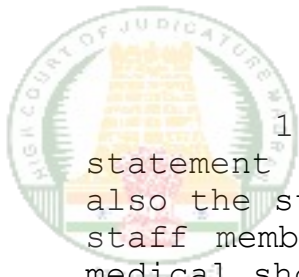
12.In **K.S.Packiyaraj Vs. The Intelligence Officer, Narcotics Control Bureau, Madurai Sub-Zone, Madurai** (cited supra), the learned Judge has granted bail considering the period of incarceration of the accused, but he has not adverted to the provisions of Section 37(1) (b) of the NDPS Act.

13.At this juncture, it would be relevant to refer to the decision in **Satpal Singh Vs State of Punjab, 2018 (2) MWN (Cr.No.504 (SC)**, wherein, the Hon'ble Supreme Court in para No.15 has observed as follows:-

"15.Be that as it may, the order dated 21.09.2017 passed by the High Court does not show that there is any reference to **Section 37** of the NDPS Act. The quantity is reportedly commercial. In the facts and circumstances of the case, the High Court could not have and should not have passed the order under **Sections 438 or 439 Cr.P.C.** without reference to **Section 37** of the NDPS Act and without entering a finding on the required level of satisfaction in case the Court was otherwise inclined to grant the bail. Such a satisfaction having not being entered, the order dated 21.09.2017 is only to be set aside and we do so."

14.As already pointed out that in **K.S.Packiyaraj Vs. The Intelligence Officer, Narcotics Control Bureau, Madurai Sub-Zone, Madurai** (cited supra), there is no reference to Section 37 of the NDPS Act. In view of the aforesaid decision of the Hon'ble Supreme Court, the petitioners cannot rely upon the aforesaid decision of this Court.

15.In **Syed Musafar Sadiq and others Vs. The Intelligence Officer, Directorate of Revenue Intelligence (DRJ), Chennai**, (cited supra), the learned Judge has held that the seized materials would not come under the category of commercial quantity and hence, complaint should have been filed within 60 days from the date of judicial custody but since complaint was not filed within the said period, the accused was entitled to get default bail under Section 167(2) Cr.P.C. But, in this case, the seized drugs would come under the category of commercial quantity. Hence, the aforesaid decision will not help the petitioners.



16. In this case, so far as A1 is concerned, as per the statement recorded under Section 67 of the NDPS Act from him and also the statements of the owner of M/s. Siva Sri Medicals and other staff members would clearly show that A1 was incharge of the said medical shop and he stored the contrabands in a room which is in his exclusive possession and he purchased the said drugs from A2 and stored for selling to the school and college students.

17. In so far as A2 is concerned, though he claimed that he is having valid licence to sell, stock or exhibit or offer for sale or distribute by wholesale drugs other than those specified in Schedules C, C1 and X, in one of the conditions in the said licence, it is stated that "No sale of any drug shall be made to a person not holding the requisite licence to sell, stock or exhibit for sale or distribute the drug". In this case, A1 has admitted in his statement recorded under Section 67 of NDPS Act, as he purchased the aforesaid drugs from A2 without bill. A2 also admitted in his statement recorded under Section 67 of the NDPS Act that he sold the drugs to A1. Admittedly, A-1 is not having any licence to sell, stock or exhibit for sale or distribute the drug. So, it appears that both the petitioners have contravened the provisions of law.

18. At this juncture, it would be relevant to refer to the decision in **Union of India Vs Ram Samujh and another, 1999 SCC (Cri) 1522**, wherein, the Hon'ble Supreme Court in para No.8 has held as follows:

"8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the **NDPS Act** should not be released on bail during trial unless mandatory conditions provided in **Section 37**, namely,

(i) there are reasonable grounds for believing that accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in the dangerous drugs, the Court should implement the law in the spirit with which the Parliament, after due deliberation, has amended."

19. In this case, a huge quantity of psychotropic substance as well as narcotic drugs involved. The petitioners have not pointed out any changes of circumstance after disposal of the earlier applications. Therefore, this Court is of the view that the petitioners have not made out a case for getting bail. Hence, these petitions are liable to be dismissed.



20. In the result, both the petitions are dismissed. Considering the fact that the petitioners are in custody for a long period, the trial court is directed to expedite the trial and dispose of the case as early as possible.

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19/08/2019

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

TO

1. THE SPECIAL COURT FOR NDPS ACT CASES, MADURAI.
2. THE PRINCIPAL SPECIAL COURT FOR EC AND NDPS ACT CASES, MADURAI.
3. THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
MADURAI SUB ZONE, MADURAI.
4. THE SUPERINTENDENT, CENTRAL JAIL, MADURAI.
5. THE SPECIAL PUBLIC PROSECUTOR FOR EC AND NDPS ACT CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

- +1. CC to Mr. R. BALAKRISHNAN Advocate SR.No.13822
- +1. CC to Mr. S. SIVA ILAYARAJA Advocate SR.No.82391
- +2. CC to Mr. C. ARUL VADIVEL @ SEKAR Advocate SR.No.13705, 13706

ORDER
IN
CRL OP (MD) Nos. 9981 and
10492 of 2019
Date : 19/08/2019

vs
TK/MMS/SAR.2/26.08.2019/8P/10C