

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Ninth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL ORIGINAL PETITION No.2676 of 2020

IN C.C.NO.146/2019

[ON THE FILE OF THE PRINCIPAL SESSIONS JUDGE,

EC AND NDPS ACT, CHENNAI]

P.KIRAN KUMAR

[PETITIONER / ACCUSED]

Vs

THE INTELLIGENCE OFFICER
NARCOTIC CONTROL BUREAU,
CHENNAI ZONAL UNIT,
SURVEY NO.49, PLOT NO.FD2,
2ND MAIN ROAD, 3RD AVENUE,
AYANAPAKKAM,
CHENNAI-600 077.
R.R.NO.4 OF 2019
(NCB F.NO.48/1/4/2019-NCB/MDS 929)

[RESPONDENT]

For Petitioner : M/S. M.L.RAMESH Advocate

For Respondent : MR. N.P.KUMAR,
SPECIAL PUBLIC PROSECUTOR FOR NCB CASES

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioners who apprehend arrest at the hands of the respondent police for the offence punishable under Sections 8(C) r/w. Section 20(B)(ii)(C), 27(A), 28 and 29 of NDPS Act, 1985 in CC.No.146 of 2019, seeks bail.

2. The case of the prosecution is that on 04.04.2019, the respondent had seized 2kgs of Brown Black Colour Oil in concentrated form which was later confirmed to be Hashish Oil which has been sent by the first accused/Warren Craig. The respondent also seized 420gms of similar substance/liquid from the 3rd accused/Mumtaz Hussain. Both the seizures were effected at Chennai. The accused persons were served with notices under Section 67 of NDPS Act and during enquiry they have given statements admitting the guilt in possessing and procuring the contraband and they also attempted to transport the contraband viz., Hashish Oil to Maldives. During enquiry, it was found that the petitioner who is A4 and yet another accused Anand/A2

were also involved in the offence. The allegation against the present petitioner is that he had transferred a sum of Rs.1,20,000/- through three bank transactions and the amount so transferred were used by the accused 1 and 2 to procure the contraband and transport the same to Chennai.

3. The learned counsel for the petitioner would submit that the prosecution has not established that there was intention or motive on the part of the petitioner to procure or transport the Hashish Oil. He would submit that the case of the prosecution is that the petitioner had transferred an amount of Rs.1,20,000/- through bank transaction to the first accused. He would submit that these amounts were infact transferred to the first accused for purchase of Air Tickets to Hyderabad and later to Visakapattinam and also a Bus Ticket from Visakapattinam to Chennai, other than having lent money to the first accused for purchase of tickets, the petitioner has not committed any offence as alleged by the prosecution.

4. The learned counsel would further submit that there are reasonable grounds for believing that the petitioner has not committed the offence. He would submit that the petitioner is prepared to abide by any stringent conditions.

5. The respondent filed counter, wherein it has been stated that 2kgs of Hashish Oil was seized under mahazar from A1 and A2 on 04.04.2019. Summons were issued to A1 and A2 and they have voluntarily given statements under Sections 67 of NDPS Act, admitting their individual guilt in procurement, possession and attempt to illegally transport 2kgs of Hashish oil. Further, they have admitted that on the instructions of the present petitioner who has been arrayed as A4, that drugs were purchased several times from Visakapattinam, on the instructions of the petitioner. Thereafter, they were arrested and remanded to judicial custody. Later A3 was taken into custody for interrogation on 16.04.2019. Wherein, she had disclosed about the bank details of the present petitioner and also disclosed about the important mobile numbers and also identified the petitioner through photographs and also disclosed the names and other people who are all involved in the illegal trafficking offence. Further, during enquiry, A3/Mumtaz Hussain had further revealed that she arranged 3kgs of Hashish Oil from Mohammed Ali from Maldives and paid a sum of Rs.3lakhs to the present petitioner. Further, during the course of investigation, summons were issued to the petitioner through post. However, the petitioner did not appear and finally he appeared on 13.07.2019, wherein he had voluntarily admitted in his own handwriting that he had indulged in illegal drug trafficking from 2017 and he had done several transactions. Further, it has been stated that the seized contraband is a commercial quantity and the accused having indulged in illicit trafficking of drug, on earlier occasion failed to satisfy the conditions laid down under Section 37 of NDPS Act for grant of bail.

6. The petitioner had earlier filed petition for anticipatory bail which was later on dismissed as withdrawn and the petitioner was arrested. After arrest, an earlier petition for bail was filed on CrI.OP.No.24407 of 2019, and it was dismissed by this Court on 30.09.2019 and that there is no change of circumstances, further

after investigation the respondent has filed the complaint against the petitioner and three other persons for the offences under Sections 20(b)(ii)(C), 23, 27A, 28 and 29 and for financing under Section 27A, the case has been taken up on file in CC.No.146 of 2019 on the file of the Principal Sessions Judge for EC & NDPS Act, Chennai and the charges have been framed and the witnesses were examined.

7. The learned Special Public Prosecutor appearing for the respondent would submit that on earlier occasion similar argument was put forth on behalf of the petitioner and it has been negatived by this Court. He would submit that the petitioner involved in illicit trafficking of Hashish Oil weighing 2kgs which is a commercial quantity and that during enquiry he has confessed to have involved in illicit trafficking and he has also financed other accused for procurement of the contraband. He would further submit that the petitioner has not satisfied the twin conditions mentioned under Section 37 of NDPS Act and the petitioner is not entitled to grant bail. He would further submit that after filing of the complaint, case has been taken up in CC.No.146 of 2019 on the file of the Principal Sessions Judge for EC & NDPS Act, Chennai and the charges were framed and some of the witnesses have been examined. He would submit that the bail is granted at this stage, there is every possibilities that the petitioner would abscond, delaying the further progress of trial. In support of his contentions, the learned Special Public Prosecutor relied on the judgment of the Hon'ble Apex Court report in 2020 (0) Supreme (SC) 69 in the case of State of Kerala Etc V. Rajesh Etc., paragraph 20 of the judgment is reproduced hereunder :-

"20. The Scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.PC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied. The ban for granting bail operates.

8. Heard the learned counsel on either side and perused the materials available on record.

9. It is the specific case of the respondent that the petitioner who is already involved in cases of similar nature had financed an amount of Rs.1,20,000/- for procurement and illegal trafficking of contraband which is of commercial quantity. As per the statement recorded under Section 67 of the NDPS Act, the petitioner has

conferred about having knowledge about all the activities of the other accused and he has actively participated in the procurement and illicit trafficking of commercial quantity of drugs. This Court on an earlier occasion considered the same plea of the petitioner in Crl.OP.No.24407 of 2019 and dismissed the same on 30.09.2019. After the dismissal of the bail application, now the complaint has been filed and the case has been taken up in CC.No.146 of 2019 on the file of the learned Principal Sessions Judge for EC & NDPS Act, Chennai and charges have been framed and the trial is going on. Further the petitioner has not satisfied the conditions for grant on bail.

10. At this stage, this Court is of the opinion there is no change in circumstances from the earlier dismissal of the petition and that the petitioner has also not satisfied the twin conditions under Section 37 of NDPS Act. This Court finds no merit in the petition for bail. Accordingly, this criminal original petition stands dismissed.

-sd/-
09/03/2020

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 PRINCIPAL SESSIONS JUDGE
FOR EC & NDPS ACT, CHENNAI.

2 THE SUPERINTENDENT,
QUARANTINE BLOCK CELL NO.22,
PUZHAI PRISON, CHENNAI-66.

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

4 THE INTELLIGENCE OFFICER
NARCOTIC CONTROL BUREAU,
CHENNAI ZONAL UNIT,
SURVEY NO.49, PLOT NO.FD2,
2ND MAIN ROAD, 3RD AVENUE,
AYANAPAKKAM, CHENNAI-600 077.

+2 CC to M/S. M.L.RAMESH Advocate on payment of necessary charges
SR.Nos.4721 & 4779