

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE **A.D. JAGADISH CHANDIRA**

Crl.O.P.Nos.6408 and 6409 of 2020

Westly

...Petitioner in both Crl.O.Ps.

-Vs-

State Rep.by the
Intelligence Officer,
Narcotics Control Bureau,
Madras.

(NCB.F.No.48/1/7/2019 NCB-MDS)

(NCB.F.No.48/1/8/2019 NCB-MDS) ... Respondent in both Crl.O.Ps

Prayer: Criminal Original petition filed under Section 439 of Code of Criminal Procedure, to enlarge the petitioner on bail in connection with Crime No.NCB.F.Nos.48/1/7/2019 NCB-MDS and 48/1/8/2019 NCB-MDS.

For Petitioner : Mr.J.Ramakrishnan

For Respondent : Mr.N.P.Kumar

Spl Public Prosecutor for NCB Cases

ORDER

The petitioner in Crl.O.P.No.6408 of 2020, was arrested on

10.07.2019 for the offences punishable under Sections 8(c), 22(b), 23, and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.NCB.F.No.48/1/7/2019 NCB-MDS, seeks bail.

2.The petitioner in Crl.O.P.No.6409 of 2020, was arrested on 10.07.2019 for the offences punishable under Sections 8(c), 22(b), 23, 28 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.NCB.F.No.48/1/8/2019 NCB-MDS, seeks bail.

3.The first accused is the petitioner in both the cases. It is stated that the respondent police had obtained information on 25.06.2019 at around 4 p.m., and based on the said information a team of the respondent police went to the Office of DHL, Tirupur, on 26.06.2019 at 4.25 p.m. They also had the presence of two independent witnesses. They examined a parcel which was brown coloured and the name of the consignor was given as the name of the present accused. The consignee was Mrs.Basimah Hadi Alyami, Saudi Arabia. The said consignment was opened. A doctor's prescription was found and invoices were also found and the box was to contain white coloured tablets in the name of

Tramadol. A detailed mahazar was prepared. The search ended on 26.06.2019 at 7 p.m.

4. In the meanwhile, on the same day, on 26.06.2019 at around 4 p.m., they received further information and again procured two independent witnesses and from the very same office, they also examined another green colour parcel. The name of the consignor was the same, namely, the present accused. The name of the consignee was Mr.Mishal Yousuf Aldossary, Saudi Aabia. On opening, Doctors prescription and invoices were found. There were a white colour tablets strips. The name of the tablets was Tramadol. A detailed mahazar was prepared. The search concluded at 10.44 p.m., on 26.06.2019. Therefore, on further investigation, they had registered two First Information Reports in Cr.Nos.NCB/1/8/2019 NCB-MDS and NCB/1/7/2019 NCB-MDS respectively. It was found that the total weight of the tablets in the two separate packets were totally 470 gms.

5. It is the specific contention of the learned counsel for the

petitioner herein that if the weight was calculated individually with respect to each packet, both the weights would be much less than what is called the commercial quantity. The learned counsel expressed his grievance stating that the investigating Authorities had clubbed both the cases together and thereafter had determined the total weight of the seized tablets and therefore, placed reliance on the fact that there is a bar under Section 37 of the NDPS Act, in view of the fact that the seized tablets becomes commercial quantity. It is repeatedly stated by the learned counsel that if the weights had been separated and separately indicated, then they would not be commercial quantity.

6. The learned Special Public Prosecutor on the other hand stated that this is the second bail petition. The prosecution had filed a common Final Report clubbing both the cases together. It is informed that the learned Special Court, Coimbatore, had also taken cognizance of the said final report and had assigned C.C.No.81 of 2019. Whether clubbing of both the two FIRs and filing of one single Final Report is permissible or not is not a question to be answered by this Court. This Court is primarily concerned to determine whether bail can be granted to

the petitioner herein.

7. It is seen that the accused Nos.2 and 3 are absconding and that investigation could not be proceeded further without examining the accused Nos.2 and 3, the Consignees and the Doctors. The first petitioner herein is the Consignor. Since the prosecution had clubbed both the cases together, the total quantity involved is a commercial quantity as on date and there is a bar under Section 37 of the NDPS Act to grant the relief sought.

8. It is also seen from the counter filed by the learned Special Public Prosecutor that the petitioner has to satisfy that he was not involved in the offence. It is specifically stated that the petitioner had exported the two consignments without any valid licence or without any valid permission from the Central Bureau of Narcotic Commissioner. It is also stated that since the investigation is also pending, bail cannot be granted.

9. I have carefully considered the rival arguments.

10. It is a fact that two separate informations were received and on the basis of two separate informations, on the same premises, namely, the office of DHL, Tirupur, two separate covers were examined by the prosecution and on opening of the two separate covers, strips of white colour tablets were found. Both were Tramadol tablets. When weighed independently, the said tablets may not come to commercial quantity, but when clubbed together, they come to commercial quantity.

11. As stated above, whether this was a right procedure or not or legally permissible or not can be in separate proceedings. However, the fact is that the prosecution has filed one single Final Report which had been taken cognizance as C.C.No.81 of 2019. In view of the gravity of offence and in view of the fact that the other accused are still to be secured and further in view of the fact that the petitioner is the Consignor as seen from the covers/parcels, I am not inclined to grant bail to the petitioner in both the petitions at this juncture.

12. Accordingly, these Criminal Original Petitions stand dismissed.

23.03.2020

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1.The Intelligence Officer,
Narcotics Control Bureau,
Madras.

2.Mr.N.P.Kumar,
Spl Public Prosecutor for NCB Cases,
High Court, Madras.



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A.D. JAGADISH CHANDIRA J.

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