

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.05.2020

PRONOUNCED ON : 03.06.2020

CORAM

THE HONOURABLE MR. JUSTICE **M.NIRMAL KUMAR**

Crl.O.P.No.7488 of 2020 and
Crl.M.P No.7807 of 2020

The Superintendent,
Narcotics Control Bureau,
Chennai Zonal Unit, Ayapakkam,
Ambattur, Chennai.

.. Petitioner

Vs.

Mehul Bafna
S/o.Umesh Kumar Bafna
No.13, Murugappan Street
Sowcarpet, Chennai.

.. Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C to cancel the bail granted to to the respondent on 07.05.2020 in Covid 19 Bail Petition No.68 of 2020.

For Petitioner : Mr.N.P.Kumar
Special Public Prosecutor for
NCB Cases.

For Respondent : Mr.Ar.L.Sundaresan,
Senior Counsel,
for Ms.Vandana Raheja

ORDER

The Superintendent of NCB, Chennai filed this petition for cancellation of bail granted by the learned Principal Special Judge NDPS

& EC, Chennai in COVID-19 Bail Petition No.68 of 2020 dated 07.05.2020.

2.The averments made in the petition is that the investigation is in progress in R.R.No.16 of 2020. The respondent was intercepted with 1.83 grams of LSD and on summon, he admitted his offence and on the basis of the seized LSD and on the basis of the statement, he was arrested on 15.03.2020 under Section 8(C) r/w Section 22(C), 28 and 29 of NDPS Act.

3.The respondent filed a bail application and the same was dismissed by the Principal Special Court for E.C & NDPS Act Cases, Chennai on 03.04.2020 and subsequently, another bail petition was also dismissed on 20.04.2020 and for filing the present bail petition, the change of circumstances is that the respondent was admitted in prison hospital for treatment and hence, COVID-19, Bail Petition No.68 of 2020 was filed on 04.05.2020, counter was filed with objection stating that seized LSD is of commercial quantity Section 37 comes to play, without satisfying the consideration, the respondent is not entitled for bail, the learned Judge without considering the objection both on law and facts,

granted bail on 07.05.2020 at about 8.05 p.m, against which the petitioner filed the above Crl.O.P No.7488 of 2020 for cancellation of bail and connected miscellaneous petition Crl.M.P No.7807 of 2020 to stay the bail order dated 07.05.2020.

4.The learned Special Public Prosecutor filed written submission and submitted that the officers of NCB mounted surveillance on 14.03.2020 at Ormes Road, Near Reliance Digital Shop, Kilpauk, Chennai-10 along with independent witness. At that time, one person came in Royal Enfield by name Aqueel Ahmed and handed over the cover to the respondent/accused. The respondent received the same, immediately, the officer surrounded him. On seeing the officer the person came in bike fled from that place. On enquiry, the respondent revealed his name as Mehul Bafna and his address. The officers after introducing themselves, explained the provisions of Section 50 of NDPS Act to the respondent which was declined by him. The respondent admitted that he is in possession of 1.83 grams of LSD which is a commercial quantity. Thereafter, mahazar proceedings were recorded. The respondent gave a voluntary statement under Section 67 of the Act, admitting that he is a drugs consumer due to bad circle of friends and he

was introduced to Aqeel Ahmed in way of buying Ganja. The respondent has paid Rs.1 lakh to Aqeel Ahmed as loan during October 2019. In repayment, the said Aqeel Ahmed in turn gave LSD to clear off the loan. The respondent admitted that Aqeel Ahmed handed over the cover containing LSD. Thereafter, the respondent was arrested on 15.03.2020 at about 17.30 hrs. Prior to it, his house was searched and certain articles were seized and thereafter, the respondent was produced before the Magistrate on 16.03.2020.

5.The main contention of the learned counsel for the petitioner is that earlier bail application filed by the petitioner was dismissed by the lower Court on 11.04.2020, wherein the respondent had taken the ground of sickness and also threat of COVID-19. The Lower Court dismissed the bail application citing Section 37 of NDPS Act. That being so, the subsequent bail application filed by the respondent, how it is entertained when there is no change of circumstances and without analysing the documents i.e medical prescriptions dated 24.12.2019 and 14.03.2020 which were filed earlier in the first application and the medicine prescribed were for cold/flu, further medicines were prescribed for 3 to 5 days only. Hence, it is not a serious disease and there is a hospital in

the Jail and Doctors are available to take care of the inmates. The respondent is hale and healthy person and he has taken treatment for his respiratory infection and acute gastritis which are not serious health issue. In view of the same, there is no necessity to release the respondent on interim bail on medical grounds. The earlier application filed by the respondent was dismissed and the medical prescriptions submitted by the respondent was considered. Thereafter, there is no change of circumstances to consider the bail application Covid Bail Petition No. 68 of 2020. Without considering Section 37 of the NDPS Act, interim bail was granted which is against the judgments of the Hon'ble Apex Court and High Court. Further, the Apex Court suo motu pursuant to the Covid-19 had given orders for the release of the convicts under trial prisoners for the following categories only:-

“Consider the release of prisoners who have been convicted or are under trial for offences for which prescribed punishment is upto 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum. It is made clear that we leave it open for the High Powered Committee to determinant he category of prisoners who should be released as aforesaid, depending upon the

nature of offence, the number of years to which should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced for the severity of the offence with which he/has is charged with and is facing trial or any other relevant factor, which the committee may consider appropriate”.

6.Further the learned Special Public Prosecutor appearing for the petitioner quoted judgments of the Apex Court reported in 2020 Supreme (SC) 69 dated 24.01.2020 **importance** of Section 37 has been discussed. Further, he has also relied upon the judgements of the Apex Court in the case of **Satpal Sing Vs. The State of Punjab** reported in 2018(13) S.C 813, 2009(@) MLJ (Criminal) 407, 2000 (9) SCC 549 - **Superintendent, NCB – Vs. R.Paulsamy**, 2013(2) MLJ (Crl.) 754 – **Intelligence Officer, NCB vs. Selvi**, 2001 2 SCC 566 **Babua @ Tazmul Hossain vs. The State of Orissa** in support of his contention.

7.This Court was informed by the Additional Public Prosecutor that for the past three months the respondent was not referred to Prison Hospital. The respondent was remanded only on 16.03.2020.

8.The learned Senior Counsel appearing for the respondent has filed vacate stay petition as well as written submission in the miscellaneous petition and in the main petition along with typed set of documents and authorities. Further, the learned Senior Counsel appearing for the respondent submitted that one Aqeel Ahmed and the respondent were friends in their College days and the said Aqeel Ahmed have approached the petitioner for hand loan of Rs.1 lakh for his personal emergency and promised to repay the same in a couple of months. Pursuant to that, in October 2019, the respondent had given hand loan. Thereafter, during November 2019, the respondent left to Surat for diamond cutting business. The respondent constantly contacted his friend Aqueel Ahmed regarding repayment of loan. On 13.03.2020, the respondent had completed his work at Surat, came down to Chennai and repayment of loan was followed up. Subsequently, on 14.03.2020, the said Aqeel Ahmed stated that he will repay the loan and asked the respondent to come to Ormes Road Near Reliance Digital Shop, Kilpauk, Chennai-10. The respondent had gone to the aforesaid place at 8.30 p.m and waited for Aqeel Ahmed. Aqeel Ahmed came in a Motor Bike and dropped a bag near him and left in a hurry. Immediately, the officers of the petitioner surrounded the respondent and enquired. From

the bag, 1.83 grams of LSD was seized. Thereafter, the respondent was taken to the office and his statement recorded, subsequently, on 15.03.2020, at about 5.45 p.m., he was shown arrest. Prior to it, his house was searched. In the mean while, since the respondent had not returned back home on 14.03.2020, the parents of the respondent lodged a complaint with the Sowcarpet Police Station on 15.03.2020. Then only they came to know that their son was taken in custody by NCB.

9.The learned Senior Counsel for the respondent further submitted that the respondent is an innocent person and he is not involved in this case. He further submitted that the respondent is falsely roped in this case, since he happens to be the college friend of Aqueel Ahmed. Earlier bail application was dismissed by the learned Principal Judge in Crl.M.P No.1276 of 2020 and thereafter, the parents of the respondent sent e-mail to the members of the High Level Committee and prayed for bail. The High Level Committee directed the father of the respondent to file a formal application. The bail application was filed and it was dismissed on 20.04.2020. The respondent thereafter filed an interim bail application before the Principal Special Judge NDPS & EC, Chennai and the interim bail was granted by the Court on the ground of

deteriorating health condition and chronic spread of Covid-19 in the prison. Considering the weak immune system, the medical records, the respondent admissions and treatment in the prison hospital and also taking into consideration the respondent's age and the prevailing situation, the Principal Sessions Judge NDPS & EC granted interim bail to the petitioner on 07.05.2020 at 8.05 p.m. Immediately, the petitioner/NCB informed the Superintendent of Jail, Puzhal not to release the respondent. On 08.05.2020, the parents of the respondent had gone to Puzhal Prison to receive their son at 6.00 a.m. On the directions of the petitioner, the respondent was not released. In the mean while, the petitioner moved Crl.O.P No.7488 of 2020 and also filed an application for interim stay in Crl.M.P No.7807 of 2020 and this Court admitted the main petition and granted stay of the operation of the lower Court order and in view of the same, the respondent could not be released. Though the petitioner relied upon several citations in support of his contention, he relied on decision rendered by the Division Bench of the Delhi High Court reported in *MANU/D/06/07/2016 in Athar Parvez*, wherein reference was made whether the Courts can grant interim bail when the condition of grant of bail under Section 37 of NDPS Act satisfied, whether the provisions and conditions of Section 37 of the NDPS Act

would apply to cases of 'bail' or would also apply when the accused seeks 'interim bail'.

10.The order of the interim bail, is extracted below for better undertaking:-

“ This bail application in respect of the accused Mehul Bafna S/o. Umesh Kumar Bafna concerned in R.R 16 /2020 shall be numbered as Covid-19 bail petition No.68/2020.

Upon notice the respondent/NCB filed counter contending that the petition is hit by Section 37 of the NDPS Act.

The petitioner prays for an INTERIM BAIL on the ground of ill health of the petitioner and attached 3 no.of documents/medical prescriptions in support of their contention.

In the circumstances where this Court has no access to back records, in view of the lockdown due to the pandemic disease threat but considering the virus threat particularly where there are social gatherings and in this case considering the young age of the accused (22 years) and also the fact that there are no bad antecedents and his incarceration for the past 50 days and also considering his prayer

that he is falling sick very often with weak immune system, this Court opines in the interest of justice, that an INTERIM BAIL can be granted for the release of the accused for the time being but with the stringent conditions for the accused to surrender before this court and there after file an application for regular bail.

1. The accused shall be released on bail on his executing a bond for Rs.ONE Lakh

2. He shall surrender before the NDPS Court on the date of reopening of the Courts, and relaxation of the lockdown.

3. A regular bail application shall be filed by the accused on the day of his surrender as above mentioned, which shall be disposed of according to law.

In the result, the petition for INTERIM BAIL is allowed with conditions. On this 7th day of May 2020, by Mrs.A.SHANTHI, B.A,B.L., PRINCIPAL SESSIONS JUDGE, NDPS & EC, CHENNAI."

11.The interim bail order of the learned Principal Special Judge for NDPS & EC Act Cases, Chennai dated 07.05.2020 which is extracted above, in which it is seen that the interim bail was granted

taking into consideration the health condition of the respondent (infection in his immune system) and also spread of epidemic Covid-19. It is well known Covid-19 would affect the lungs / respiratory system. The respondent is suffering from respiratory problem. It is seen from the medical records, which weighed and made the Court below to pass such order. Further, the spread of endemic Covid-19 in the prison seems to be real. The petitioner has filed his objections in which Section 37 of NDPS Act, has been stressed, after considering the counter affidavit of the petitioner, the learned Principal Special Judge for NDPS & EC Act Cases, Chennai, granted interim bail.

12.The power to grant regular bail includes the power to grant interim bail. The petitioner's case itself is that the respondent is a drug consumer due to bad friend circle and he is not a drug peddler. The respondent admitting in prison hospital and taking treatment for lung infection is not disputed and the medical prescriptions confirms the respondent was taking medicine for respiratory system. The COVID-19 virus attacks lungs and collapses respiratory system, which might be fatal. The COVID-19 cases are raising in Central Prison, Puzhal. The interim bail entailing temporary release can be granted under compelling

circumstances and grounds, even when regular 'Bail' would not be justified. The past conduct of the accused is not detrimental.

13.In view of the prevailing situation and also taking into consideration of the respiratory infection of the petitioner and the interim bail was granted only for a limited period and for the reasons stated above, this Court finds no reasons to interfere with the interim bail order granted by the learned Principal Special Judge for NDPS & EC Act Cases, Chennai, in Covid 19 Bail Petition No.68 of 2020.

14.In the result, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

03.06.2020

Internet: Yes/No.

Speaking / Non-Speaking Order

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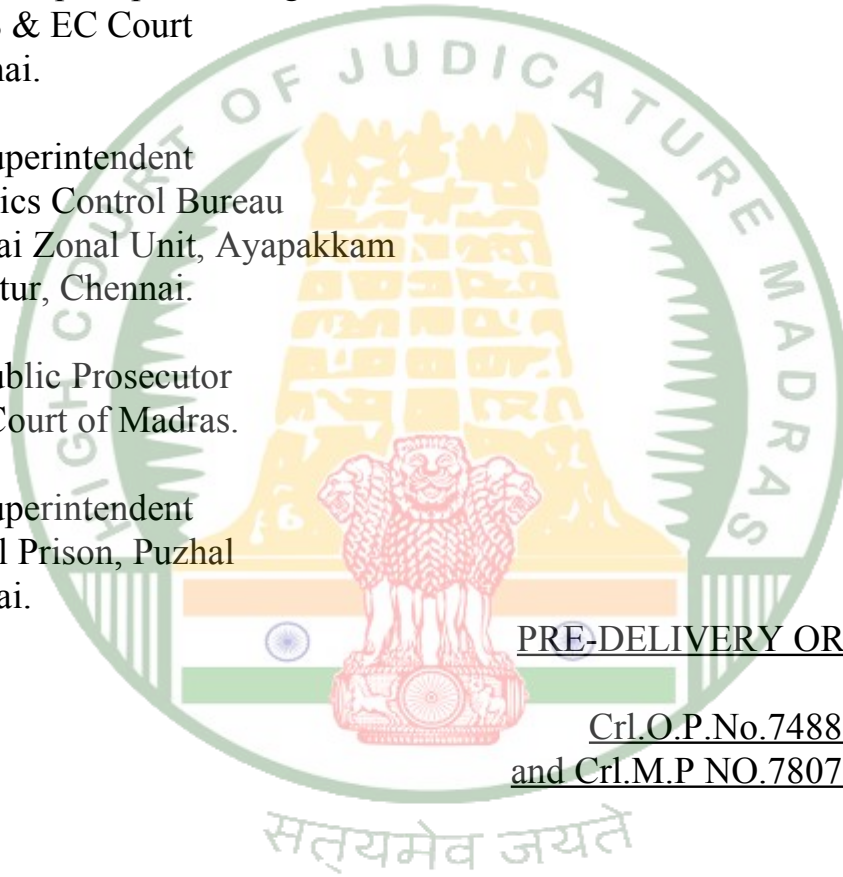
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M.NIRMAL KUMAR J.

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To

1. The Principal Special Judge,
NDPS & EC Court
Chennai.
2. The Superintendent
Narcotics Control Bureau
Chennai Zonal Unit, Ayapakkam
Ambattur, Chennai.
3. The Public Prosecutor
High Court of Madras.
4. The Superintendent
Central Prison, Puzhal
Chennai.



PRE-DELIVERY ORDER IN

CrI.O.P.No.7488 of 2020
and CrI.M.P NO.7807 of 2020

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03.06.2020