

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.09.2020

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No. 9298 of 2020

and

Crl.M.P.No.4246 of 2020

Union of India ...Petitioner  
Rep. by the Senior Intelligence Officer,  
Directorate of Revenue Intelligence,  
Chennai Zone Unit, No.27, G.N. Chetty Road,  
T.Nagar, Chennai - 600 017.

Vs.

Bharat Chaudhary ...Respondent

**PRAYER:** Criminal Original Petitions are filed under Section 439(2) of Criminal Procedure Code to cancel the granted to the petitioner on 20.06.2020 in COVID-19 Bail Petition No.127 of 2020 by the Special Judge for EC and NDPS cases at Chennai.

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

For Respondent : Mr.R.C.Paul Kanagaraj

**ORDER**

**(The case has been heard through video conference)**

This petition has been filed to cancel the interim bail granted to the respondent dated 20.06.2020 passed in COVID -19 bail petition No.127 of 2020 by the Special Judge for EC and NDPS cases, Chennai.

2. The respondent/accused was arrested in connection with the case registered in R.R.No.14 of 2019 wherein the petitioner/complainant had seized 90.386 kgs. of Narcotic Substance (1,37,665 tablets) of different varieties (Alprazolam, Hydrocodone, Nitrazepam, Phentermine, Zolpidem, Oxycodone and also dubious cocktails) from the accused. The respondent/accused was arrayed as A4 and he was arrested on 16.03.2020 at Jaipur and produced before the Principal Special Judge (E.C & NDPS) at Chennai on 20.03.2020.

While so, the petitioner had applied for COVID-19 bail in Bail Petition No.127 of 2020 and the Special Judge for EC and NDPS cases, Chennai, by order dated 20.06.2020 had granted interim bail to the respondent/accused. The Trial Court while granting the bail, directed the respondent/accused to surrender within 10 days from the date of relaxation of the lockdown and resumption of normal functioning of the Court and directed the petitioner to file an application for regular bail. This petition has been filed by the petitioner/complainant seeking to cancel the Covid Bail order.

3. Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the petitioner/ complainant would submit that it is a case of seizure of commercial quantity of Narcotic Drugs where 90.386 kgs of Narcotic Drugs in the form of 137665 tablets of various drugs were seized. Being a case of seizure of commercial quantity of Narcotic drugs, the petitioner if found guilty is liable to be sentenced for a period of 10 years and upto 20 years. The Hon'ble Supreme Court in its order dated 23.03.2020 in Suo Motu Writ Petition No.1 of 2020 had directed that bail petition of prisoners who have been convicted or are under trial for which prescribed punishment is upto 7 years or less with or without fine can be considered. The Special Court without properly considering the order of the Hon'ble Supreme Court, in Suo Motu Writ Petition No.1 of 2020 and without taking into consideration the order of the Hon'ble High Court of Delhi in Bail Application No.2715 of 2019 in the case of **Christian Michel James Vs. Cental Bureau of Investigation** had granted interim bail. Further the trial Court had not satisfied itself with regard to the mandatory requirements under Section 37 of the NDPS Act and thereby the order of bail has to be cancelled and the respondent/accused has to be directed to surrender. He would further submit that since the lower Court while granting bail has not taken into consideration and not satisfying itself with regard to the mandatory requirement under Section 37 of the NDPS Act the bail has to be cancelled and the matter has to be remitted to the concerned Court for fresh consideration in view of the principle laid in **2018 3 SCC 738 Union of India vs Niyazuddin Sk and Another.**

4. Mr.R.C.Paul Kanagaraj, learned counsel for the respondent/accused would submit that the lower Court has only granted interim bail on mercy ground and taking into consideration the pandemic situation and health condition of the respondent/accused irrespective of commercial or non-commercial quantity of NDPS. He would further submit that the situation remains the same and would seek to dismiss the petition.

5. Heard both sides and perused the materials placed on record.

6. The Special Court has granted interim bail on 20.06.2020 in Covid-19 Bail Petition No.127 of 2020. It is opposite to refer to the order passed by the Special Court while granting interim bail.

*'This is the Interim Bail Petition in respect of one Bharat Choudhary whose fathers name is not mentioned by the respondent in the complaint filed by them in RR*

No.14/19 However it is found only in the petition filed by the petitioner as S/o Vinod Choudary. This petition shall be numbered as Covid-19 Bail Petition No.127/2020 upon notice to the Ld SPL PP one Mr. Ranjan Kumar I.O. DRI, Chennai filed counter.

Now A few words about the callousness of the respondent in filing the counter statement before a Court of law. I have to mention here that the counter filed by them is not only undated but also unsigned either by Mr.Ranjankumar , I.O. Or by the Ld. SPL PP.

According to the respondent, there are 4 accused dealing in drugs business. The first accused according to the prosecution is running a Ayurvedic Medicine Company under the guise of which he had been consigning drugs to several persons. A2 is the courier man who is conniving with A1. A3 is their Assistance. A4 is this petitioner. Who according to the prosecution got introduced to A1 through one Sanjeev and another by name Nikitesh Chauhan and secures customers and drugs which enhance male sexual performance. Whereas the petitioner, on the other hand would plead innocence and thoroughly deny any complacence. In the entire affair and submit that he had been coigned in this unnecessarily. The petitioner herein prays for an interim bail on medical grounds stating that he is an youngman of 22 years. Already suffering from pharyngitis. A serious throat and respiratory tract problem and that it had aggravated now and attached medical records. A perusal of which does reveal that earlier he had respiratory problems coupled with gastro intestinal condition.

In such circumstances, this case needs to be dealt with in the light of section 37 NDPS Act and the twin tests laid therein juxtaposed with the present day pandemic issues which is a cause for concern in the social gatherings prevailing in the prisons. It is known from the statistics released that young men. Particularly in the age group of 20 to 30 are more prone to the virus attach and no one knows when this lockdown would end as it keeps on prolonging. Also considering the period custody already undergone by the accused and the fact that there are no averments regarding any recovery from this accused and also considering his plea that he would not abscond and that he would co-operate for trial.

This Court sincerely opines that no prejudice is going to be caused to the respondent in allowing only an interim bail to the accused with strict conditions of his surrender as follows:

The Accused is ordered to be released on his executing a bond for a sum of Rs.One Lakh . Thereafter he shall not leave Chennai. He shall surrender before this Court within 10 days from the date relaxation of the lockdown and Court resume normal functioning and file an application for regular bail which shall be disposed of by this Court in accordance with law.

7. In Suo Motu Writ Petition No.1 of 2020 dated 23.03.2020, the Hon'ble Supreme Court has held as follows:-

The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID 19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled. We direct that each State/Union Territory shall constitute a High Powered Committee Comprising of (i) Chairman of the State Legal Service Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (iii) Director General of Prison (s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be though appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are under trial for offences for which prescribed punishment is up to 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 clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the committee may consider appropriate.

8. Further in **Christian Michel James Vs. Cental Bureau of Investigation**, the Hon'ble High Court of Delhi in Bail Application No.2715 of 2019 has held as follows

Pursuant to the order of the Hon'ble Supreme Court dated 23<sup>rd</sup> March 2020, a High Powered Committee of this Court vide its meeting dated 28<sup>th</sup> March, 2020 discussed and resolved the issues, relevant portion whereof is reproduced as under:-

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It has further been resolved that following of UTPs even if falling in the above criterion, should not be considered:-

i All inmates who are undergoing trial for intermediary/large quantity recovery under NDPS Act:

ii. Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act.

i. Those under trial prisoners who are facing trial for offences under Sections 376, 376A, 376B, 376C, 376D and 376E and Acid Attack:

ii. Those UTPs who are foreign nationals:  
and

i. Those under trial prisoners who are facing trial under prevention of Corruption Act (PC Act)/ PMLA; and

ii. Cases investigated by CBI/ED/NIA/Special Cell Police and Terror related Cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc

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xxxx".

In view of the petitioner failing to qualify on three criterias laid down by the High Power Committee, i.e, being a foreign national, involved in more than one case not being on bail in others and the cases being under Prevention of Corruption Act and Prevention of Money Laundering Act, the petitioner has not been released on bail.

9. It is a case where the petitioner was arrested with regard to seizure 90.386 kgs Narcotic Substance which is a commercial quantity. The petitioner complainant has completed the investigation and filed the final report against the accused. If the respondent/accused is found guilty he is liable to be convicted for a minimum sentence of 10 years which could extend to 20 years and he also to be liable fine which shall not to 1 lakhs which may extent to 2 lakhs. The Hon'ble Apex Court in its order dated 23.03.2020 in Suo Motu Writ Petition No.1 of 2020 as held that interim bail application can be considered in respect of prisoners who have been convicted or are under trial for the offences for which the prescribed punishment is upto 7 years or less, with or without fine. It has been clarified by the Hon'ble High Court of Delhi in Application No.2715 of 2019 where inmates bail application in respect of person under going trial for intermediary/ large quantity of recover under NDPS Act should not be considered. The case of the respondent /accused false within those categories and the case of the petitioner can not be considered for interim bail during Covid period. Further, in the opinion of this Court, the Special Court while granting bail has not satisfied itself to the mandatory requirement under Section 37 of NDPS Act.

10. In view of the above, the order passed in CrI.M.P.No.127 of 2020, dated 20.06.2020 by the learned Special Judge, for EC and

directed to surrender before the Prison Authorities on or before 25.09.2020 and liberty is granted to the petitioner to file a fresh application for regular bail before the Special Court for EC and NDPS cases and the Special Judge for EC and NDPS Cases, shall consider the bail application and pass orders on merits in accordance with law after satisfying the mandatory requirements under Section 37 of NDPS Act within a period of four weeks from the date of filing of fresh bail petition. It is made clear that since the matter is remitted back to the Special Court for considering of bail afresh, this Court desists from setting out the facts of the case in detail. The Special Court shall consider and decide the bail application without being influenced by any observation made in this order.

11. With this direction, this Criminal Original Petition is allowed. Connected miscellaneous petition is closed.

-sd/-

18/09/2020

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 SPECIAL JUDGE FOR EC & NDPS CASES AT  
CHENNAI.

2 THE DIRECTOR OF REVENUE INTELLIGENCE,  
CHENNAI ZONAL UNIT, NO.27,  
G.N.CHETTY ROAD, T.NAGAR,  
CHENNAI-600 017.

3 THE REGISTRAR GENERAL,  
HIGH COURT, MADRAS.

4 THE SECTION OFFICER,  
B SECTION,  
HIGH COURT, MADRAS.

CC to MR.N.P.KUMAR SPL. PP FOR DRI CASES Advocate on payment  
of necessary charges

CRL OP.9298/2020  
and Crl.M.P.No.4246 of 2020

Date :18/09/2020

TA-25/09/2020

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