

**IN THE HIGH COURT OF JUDICATURE OF MADRAS**

**Orders Reserved on : 17.08.2020**

**Pronouncing on : 24.08.2020**

**CORAM**

**THE HONOURABLE MR.JUSTICE.N.ANAND VENKATESH**

**Crl.O.P.No.9324 of 2020**

K.Saran Kumar

....Petitioner/  
Accused -2(in Jail)

**Vs.**

The Intelligence Officer,  
Narcotics Control Bureau (NCB),  
Chennai Zonal Unit, Chennai

... Respondent /  
Complainant

Prayer: Criminal Original Petition filed under Section 439 of Cr.P.C. to grant bail to the petitioner in C.C.No.7 of 2019 on the file of the 1<sup>st</sup> Additional Special Court for exclusive trial of cases under NDPS Act, Chennai.

For Petitioner : Mr.G.Murugendran

For Respondent : Mr.N.P.Kumar

Special Public Prosecutor for  
NCB cases

**ORDER**

This is the 2<sup>nd</sup> bail petition filed before this Court and the earlier bail petition filed by the petitioner was dismissed by this Court by an order dated 17.05.2019.

2.The learned counsel for the petitioner submitted that there were certain important grounds that were not brought to the notice of this Court, when the earlier bail petition was argued. The learned counsel placed the following submissions for the consideration of this Court :-

(a) The private complaint filed against the petitioner reveals the fact that it was filed by an officer, who is in the rank of Intelligence Officer and it is not in compliance with Section 36(A) of the NDPS Act. In order to substantiate his submission, the learned counsel relied upon the Gazette Notification dated 27.09.1989 and the same is extracted hereunder :-

MINISTRY OF FINANCE  
(Department of Revenue)

ORDER

New Delhi, the 27<sup>th</sup> September 1989

S.O.763 (E) :- In exercise of the powers conferred by clause (d) of Sub-section (i) of Section 86A of the Narcotic Drugs and Psychotropic Substance Act, 1985, (61 of 1985), the Central Government hereby authorizes the officers of the above the rank of Inspector in the Department of Customs, Central Excise, Narcotics, Revenue Intelligence, Central Economic Intelligence Bureau and the Narcotics Control Bureau under the Ministry of Finance, Government of India for filing of complaints relating to an offence under the said Act before Special Courts.

[No.18/89-F.No.664/99/89-OPIUM]  
A.C.SALDANHA, Addl.Secy. “

To substantiate his submission, the learned counsel relied upon the judgement of the Hon'ble Supreme Court in ***[State Through Narcotic Contro Bureadu Vs.Kulwant Singh]*** reported in 2003 9 SCC 193 and ***[Roy V.D Vs.State of Kerala]*** reported in 2000 8 SCC 590.

(b) A reading of the statement recorded from A1 and A2 under Section 67 of the NDPS Act shows that the petitioner did not have the knowledge that the Narcotic drug was stored in the dickey of the car. The petitioner had merely driven the car without knowing that Narcotic Drug has been kept in the car. To support his submission, the learned counsel relied upon Section 35 of the NDPS Act and the Judgement in ***[Bhola Singh Vs. State of Punjab]*** reported in 2011 11 SCC 653.

(c) The learned counsel submitted that for the purpose of considering the bail application, what is required to be satisfied is that there are reasonable grounds for believing that the accused is not

guilty and it is not necessary for this Court to record the finding of not guilty.

3. Mr.N.P.Kumar, learned Special Public Prosecutor [NCB Cases] appearing on behalf of the respondent submitted that a plain reading of the statement recorded from A1 and A2 clearly shows that the petitioner had the knowledge of the Narcotic Drug being carried in the Car. This issue was also considered while dealing with the earlier bail petition and the same issue cannot be again urged in the 2<sup>nd</sup> bail petition. The learned counsel further submitted that the Intelligence Officer has filed this complaint on behalf of Narcotics Control Bureau (NCB) and he is the authorised officer to present the complaint. The learned counsel further submitted that the charges have already been framed and the case is at the stage of trial and PW1 has been examined in chief. Therefore, the learned counsel submitted that this Court can fix some time limit for the completion of the trial.

4. A careful reading of the order passed by this Court while dismissing the earlier bail petition filed by the petitioner shows that this Court has gone into the issue as to whether the petitioner had the knowledge of the Narcotic Drug being carried in the car. This Court had recorded a finding that there are *prima facie* materials available against the petitioner. Therefore, a different finding cannot be rendered in the present case.

5. The next ground urged by the learned counsel for the petitioner is the competency of the Intelligence Officer to present a private complaint before the concerned Court. This issue involves the interpretation of the Notification dated 27.09.1989 and Notification dated 30.10.2019. This Court does not want to undertake this exercise in the present bail petition, since any finding given by this Court will have a bearing in the main case itself. In fact the petitioner filed a petition for discharge on this ground and it was rejected by the Trial Court and the same has been challenged and it is pending before this Court by way of a Criminal Revision Petition.

6. This Court had already fixed the time limit for the completion of the trial. Unfortunately, the functioning of the Court has been disrupted due to COVID conditions. However, that cannot be a ground for releasing the petitioner on bail, in view of the mandatory requirements under Section 37 of the NDPS Act.

In the result, this bail petition is dismissed and the Court below is directed to conduct the trial on a day-to-day basis after normalcy is restored and shall complete the proceedings as expeditiously as possible.

24.08.2020

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**N.ANAND VENKATESH., J.**

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**24.08.2020**