

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.12.2020

Pronounced on : 23.12.2020

CORAM :

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

Crl.O.P.Nos.11336 and 11934 of 2020

1.K.Sirajudeen ... Petitioners in
2.Sai @ Thiyagarajan Crl.O.P.No.11336 of 2020
R.Vadivel ... Petitioner in
Crl.O.P.No.11934 of 2020

Vs.

State by ... Respondent
The Intelligence Officer
Directorate of Revenue Intelligence
G.N.Chetty Road
T.Nagar, Chennai - 600 017
R.R.No.15 of 2020
(F.No.DRI/CZU/VIII/48/ENQ-1/INT-06/2020)

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioners on bail in R.R.No.15 of 2020 (F.No.DRI/CZU/VIII/48/ENQ-1/INT-06/2020) on the file of the respondent police.

For Petitioners in Crl.O.P.No.11336 of 2020 : Mr.S.Jayakumar For
Mr.J.Wlliam Shakesphere

For Petitioner in Crl.O.P.No.11934 of 2020 : Mr.S.Saravanakumar

For Respondent in both the cases : Mr.N.P.Kumar
Spl. Public Prosecutor
(D.R.I.Cases)

COMMON ORDER

(The case has been heard through video conference)

In Crl.O.P.No.11336 of 2020, the petitioners were arrested and remanded to judicial custody on 13.03.2020 for the offences punishable under Sections 8(c) of NDPS Act 1985 (as

amended) and Sections 22(c), 28 and 29 of NDPS Act 1985 (as amended), seek bail.

2. **In CrI.O.P.No.11934 of 2020, the petitioner was arrested and remanded to judicial custody on 13.03.2020 for the offences punishable under Sections 8(c) read with 21(c), 22(c), 28 and 29 of NDPS Act, seeks bail.**

3. The case of the prosecution is that based on a specific information that one R.Vadivel (A4) of Villupuram residing at Jegannathan Nagar, Panampet, Villupuram, was indulging in illicit manufacturing of Tramadol tablets covered under NDPS Act, in huge quantity and transporting the same to one Sai @ Thiyagarajan (A2) of Chennai, through lorry transport, who in turn had intended to hand over the contraband to one A.Faisal Raja (A1), residing at Ayanavaram, Chennai, for the purpose of smuggling them out of Chennai and that on 12.03.2020, one consignment containing the contraband sent vide L.R.10166028, dated 11.03.2020 by Vadivel (A4), was lying at M/s.Lakshmi Cargo Company located at Pariwakkam Main road, Senneerkuppam, Poonamallee and was likely to be collected by Sai @ Thiyagarajan (A2), the officers of Directorate of Revenue Intelligence (DRI), Chennai, proceeded to the said place and contacted Shri.A.S.Ganesh Branch, In-charge of M/s.Lakshmi Cargo company and enquired him relating to the consignment pertaining to L.R.10166028 dated 11.03.2020 and that the said Ganesh had informed that the consignment would be taken delivery shortly by the person concerned at their premises and the same was booked under 'To pay' category. After sometime two persons namely Sai @ Thiyagarajan (A2) and K.Sirajudeen (A3) approached the branch in-charge and got the formalities done for the clearance of the subject consignment containing the contraband and when they were about to move with the said contraband/consignment out of the lorry office, they were intercepted by the respondent. After interception, in the course of the Mahazar proceedings on 12.03.2020 at M/s.Lakshmi Cargo company (a division of M/s.Chakradhara Aerospace and cargo (P) Ltd.) at Pariwakkam Main Road, Heritage Foods Compound, Senneerkuppam, Poonamallee, Chennai, the identities of the two persons were obtained and they introduced themselves as Shri Sai @ Thiyagarajan and K.Sirajudeen and further on enquiring Sai @ Thiyagarajan he had produced the L.R.No.10166028 dated 11.03.2020. Initially during enquiry the said Sai @ Thiyagarajan and K.Sirajudeen had informed that the consignment had only medicine tablets, but on persistent enquiry they revealed that the consignment was having 'Tramadol tablets' a drug covered under NDPS Act. The said persons had informed that they have come to receive it as per their plan with one A.Faisal Raja (A1). On Further, persistent the enquiry Sai @ Thiyagarajan informed that accused A1 A.Faisal Raja had placed the order for procuring Tramadol tablets to him and in turn he along with K.Sirajudeen had placed the order for the same to one R.Vadivel of Villupuram, who manufactured the said tablets and as per their plan with R.Vadivel both of them had come to take delivery of the said consignment containing the Tramadol tables form the said delivery of the point;

that both of them have knowingly indulged in the smuggling of Tramadol tablets, a drug covered under the NDPS Act in collusion with A.Faisal Raja and R.Vadivel. Thereafter, the said persons were taken to the office of the D.R.I., T.Nagar, Chennai and detailed examination of the contents of consignment was conducted and the statement were recorded under Section 67 of the NDPS Act from them. Further in continuation, the officers of the D.R.I., T.Nagar, Chennai, seized a quantity of 22.695 kgs. of substance tablets under the provisions of the Narcotic Drugs and Psychotropic Substances Act 1985 (as amended) in the presence of independent witnesses. The accused admitted that the consignment was transported from Villupuram vide L.R.10166028, dated 11.03.2020, by the accused Sai @ Thiyagarajan and K.Sirajudeen.

4. Further, on 12.03.2020 based on the statement of other accused A.Faisal Raja, was enquired and statement was also recorded under Section 67 of the NDPS Act wherein he had admitted that 10 years back, he was arrested for having found in possession of 10 kg of Ephridine and he was convicted and fined Rs.3 Lakhs and thereafter before 2 years he got acquainted with Sai @ Thiyagaraj and that one Ahamed Bai @ Kerala Bai had asked him to supply tramadol tablets and that he inturn had asked Sai @ Thiyagarajan and K.Sirajudeen to supply tramadol tablets and that earlier they had supplied 50,000 tramadol tablets and he had paid of Rs.4 Lakhs to them and he had received commission of Rs.1 Lakh, thereafter in another occasion he had placed order for one Lakh tablets and received it from them and he had paid a sum of Rs.8 Lakhs to them and received commission of Rs.2 Lakhs, thereafter placed another order with Sai @ Thiyagarajan and K.Sirajudeen for supply of one Lakh tablets and that he had paid of Rs.4 Lakhs as advance and for supply of the same. Further stated that he was in touch with Sai @ Thiyagarajan in his mobile phone.

5. In furtherance of the information, the residential premises of the said R.Vadivel (A4), Villupuram, was searched under a mahazar proceedings dated 12.03.2020 and incriminating documents and three Tramadol tablets were found to have marking "225 DS" on one side and "+" sign on the other side which were same as that of the tablets that were seized at M/s.Lakshmi Cargo Company, under the provisions of the NDPS Act, 1985, were seized in the presence of independent witnesses and A4 admitted them to be Tramadol tablets. Thereafter, a voluntary statement was recorded under Section 67 of the NDPS from Vadivel (A4) on 13.03.2020 wherein, inter alia, he had admitted that he had colluded with A1, A2, A3 for trafficking of the contraband seized at Chennai and that he had procured raw material and arranged to manufacture of Tramadol tablets and also booked the consignment of Tramadol tablets by L.R.10166028 dated 11.03.2020 at Villupuram to be delivered at Lakshmi Cargo Company, Chennai, and informed Sai @ Thiyagarajan (A2) to collect the same at Chennai and that on earlier two occasions also, he had arranged for manufacturing and transporting of Tramadol tablets for monetary consideration. The fact of A4's active involvement was also corroborated by the voluntary

statements recorded under Section 67 of the NDPS Act, 1985 of other accused / A1, A2 and A3 on 12.03.2020. Wherein, it has been stated that they were having knowledge about the consignment and their intention to export it out of Chennai.

6. The Tramadol tablets as admitted by A4, A1, A2 and A3 are prohibited items and are covered under the Psychotropic Substances and attracts the penal provisions of NDPS Act, 1985 and thereby, the petitioners were placed under arrest on 13.03.2020 for contravention of Sections 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (as amended) which is punishable under Section 21(c), 22(c), 28 and 29 of the Act and remanded to judicial custody on the same day. Later, the samples drawn were sent for chemical analysis by the Court to CRCL, Chemical Lab and the test report of the subject tablets by CRCL has also confirmed the presence of "Tramadol Hydrochloride" vide letter Lab.No.CHLCHN/NDPS/1858 & 1859/17.03.2020 dated 20.03.2020. Hence, the complaint.

7. Mr.S.Jayakumar, for Mr.William Shakesphere, the learned counsel appearing for the petitioner in Crl.O.P.No.11336 of 2020, would submit that the petitioners are innocent and they have been falsely implicated in this case. He would submit that the 1st petitioner is an oil merchant and the 2nd petitioner is a AC mechanic. He would submit that except the statements alleged to have recorded from the petitioners under Section 67 of the NDPS Act, there is no other material to implicate the petitioners for committing the offence and that there are reasonable grounds for believing that the petitioners are not guilty of such offence. He would submit that the statements were obtained from the accused under Section 67 of the NDPS Act under compulsion and the admissibility of the statement are highly doubtful. He would further submit that even as per the prosecution, the consignment was addressed to one Sai @ Thiyagarajan and as far as the accused K.Sirajudeen (A3) is concerned, he had only accompanied Sai @ Thiyagarajan (A2) to collect the consignment and (A3) was not aware that the consignment was containing Narcotic Substances. Further, the petitioner / A3 and A2 are alleged to have gone to the lorry parcel office only on behalf of A1, to collect the consignment. He would further submit that the confession of K.Sirajudeen (A3) is nothing but replica of the confession of A2 and there seems to be no voluntariness in the confession.

8. He would further submit that in order to place reliance on the confession statement, it should pass a three tier test namely;

1. the confession was true
2. Voluntary; and
3. it was obtained without any undue influence

9. The learned counsel for the petitioner would submit that statement under Section 67 have been recorded by officers of the department and that the officers falls within the meaning of

Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act and cannot be taken into account in order to convict under the NDPS Act. He would further submit that the statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act. In support of his contentions, he relied on the judgment of the apex Court in **TOFAN SINGH VS. STATE OF TAMIL NADU reported in (2020 SCC ONLINE SC 882**, wherein the Hon'ble Court has stated as follows:-

155. we answer the reference by stating'

(i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers" within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

10. He would further submit that the statement under Section 67 of the NDPS Act have been recorded from the accused when they were in custody and that it is established that a confession recorded when the accused is in custody, is a weak piece of evidence and that there must be some corroborative evidence. In support of his contentions he relied on the judgement in **Mohammed Fasrin vs. State represented by the Intelligence Officer, reported in (2019) 8 SCC 811** (para 8)

8. We, for the decision of this case, therefore, proceed on the premise that the confession is admissible. Even if it is admissible, the court has to be satisfied that it is a voluntary statement, free from any pressure and also that the accused was apprised of his rights before recording the confession. No such material has been brought on the record of this case. It is also well settled that a confession, especially a confession recorded when the accused is in custody, is a weak piece of evidence and there must be some corroborative evidence. The confession of the co-accused, which was said to be a corroborative piece of evidence, has been discussed above and is of no material value. Therefore, other than the two confessional statements - one of the co-accused and the other of the accused, the prosecution has gathered no evidence to link the appellant with the commission of the offence.

As such, without going into the legality of the admissibility of the confession, we hold that even if these confessions are admissible then also the evidence is not sufficient to convict the accused.

11. He would further submit that there are reasonable grounds for believing that the petitioners are not guilty of such offence. The learned counsel for the petitioner would submit that the Tramadol was a drug which was used by the pharmaceutical industries as a sedative from time memorial it was available across the counter and that only by notification No.1761 (E) dated 26.04.2018 of the Ministry of Finance (Department of Revenue) Tramadol was brought under the Schedule and possession of 250 grams and above was stated to be a commercial quantity. The notification had not been widely published and the petitioners cannot be excepted and presumed to have knowledge that the drug was a schedule substances. Hence, he prays for grant of bail to the petitioner.

12. Mr.S.Saravanakumar, the learned Counsel appearing for the petitioner in CrI.O.P.No.11934 of 2020, would submit that the petitioner is an innocent and he has been falsely implicated in this case based on the confession recorded from the other arrested accused. He would submit that though the confession statement is alleged to be recorded from the petitioner under Section 67 of the NDPS Act, it is not in consonance with and it does not support the case of the prosecution. As per the confession statement, the petitioner is stated to have purchased the raw material for manufacture of Tramadol from one Vipul Jain proprietor of Messrs.Vipul Chems and the further allegation is that the petitioner had handed over the raw materials for manufacture to one Arul Prakasam and his wife Sengamalam who is one of the Director of M/s.Sivmed Remedies Pvt Ltd, at Villupuram, Puducherry. He would further submit that though the statements have been recorded from the Thiru.Vipin who is alleged to have sold the raw materials to the petitioner and statements have been recorded from Mr.Arul Prakasam and his wife Sengamalam who are stated to have manufactured the drug on behalf of the petitioner, the statements recorded from them do not support the case of the prosecution. Further, a sample was taken from the factory premises of Arul Prakasam alleging that they were remnants of the raw material given by the petitioner, whereas, the chemical analysis report of the sample does not conform to a banned drug and it does not support the case of the prosecution that the material recovered from the factory of Arul Prakasam is a banned substance. Further a lorry receipt and only 3 tablets of Tramadol were stated to have been recovered from the residence of the petitioners and the tablets have also not been subjected to chemical analysis and in such circumstances other than the confession of A2 and A3 who have stated that the petitioner is the person who supplied the contraband to them, there is no other conclusive material to link that the petitioner is the person who had supplied the contraband and thereby, the petitioner has made out a

reasonable ground for believing that the petitioner is not guilty of other offences. He would further submit that the petitioner has not been brought to any adverse notice and that he has not committed to any of the offence. He would further submit that the petitioner has not been identified by the staff at the lorry office at Villupuram, as the person who had booked the consignment. Further, the lorry receipt also stands in the name of one R.Gunasekaran and that thereby the petitioner cannot be stated to be the person who has booked the consignment to the other accused. He would further submit that in the detailed counter which has been filed by the respondent, nothing has been averred that if the petitioner is released on bail he will indulge in offence of similar nature and thereby, would seek for bail to the petitioner.

13. The respondent has filed a detailed counter in both the applications.

14. Mr.N.P.Kumar, learned Special Public Prosecutor for D.R.I. Cases, would submit that it is a case involving commercial quantity of Narcotic Tablet Tramadol which is notified under Psychotropic Substances in the schedule of Narcotic Drugs and Psychotropic Substance Act, 1985. He would submit that possession of 250 grams and above is a commercial quantity and in this case a total weight of tablets seized is 22.695 kgs. and thereby, Section 37 of NDPS is applicable in this case and the burden is on the accused to make out a case to satisfy the Court that there are reasonable grounds to believe that they are not guilty of such offence. He would submit that in this case on a specific information that the accused were involved in illicit manufacturing and trading of Tramadol tablet and were transporting the same to A2 through lorry transport, who in turn had agreed to hand over the contraband to A1 for further smuggling out of India and one contraband consignment was lying vide L.R. 10166028 dated 11.03.2020 at M/s.Lakshmi Cargo Company, Senneerkuppam, Poonamallee, Chennai, and when it was likely to be collected by A2, the Officers of D.R.I. proceeded to the said lorry office and intercepted A2 and A3 who had completed the formalities to collect the subject consignment and were about to move the said consignment out of the lorry office. They were enquired at the lorry office vide mahazar proceedings dated 12.03.2020 and were enquired at the D.R.I. Office, Chennai. During the course of enquiry, the petitioners viz petitioners in Crl.O.P.No.11336 of 2020 have given statements admitting the knowledge and possession of the commercial quantity of prohibited Narcotic drugs. Based on their statement, A4 Vadivel was arrested at Villupuram and he has also admitted for having manufactured and sent it to A2 and A3 for consideration. He would further submit that all the accused have admitted that they had colluded with each other and A4 had arranged to manufacture and transport Tramadol tablet for monetary consideration and that the voluntary statements recorded from each of the individual accused under Section 67 of the NDPS Act corroborates the knowledge of manufacturing and transporting. He would submit that since it is a case of commercial quantity, the burden is on the accused to make

out reasonable grounds for believing that they are not guilty of such offence. He would further submit that the admissibility and evidentiary value of the confession recorded under Section 67 of NDPS Act, can be decided only at the stage of trial and not at the stage of bail. He would further submit that the judgments referred by the counsel for the petitioners in **Tofan Singh vs, State of Tamil Nadu** and **Mohammed Fasrin vs. State represented by the Intelligence Officer** with regard to the admissibility of the confession recorded under Section 67 of the NDPS Act cannot be applicable at the stage of bail. The Apex Court had held that the statement under Section 67 of the NDPS Act cannot be used as a confessional statement in Trial, whereas in this case it is only at the stage of bail. Further apart from the statement recorded under Section 67 of the NDPS Act, there are other prima facie materials to connect the the accused for having colluded, manufactured and transported huge quantity of illicit drugs and that there are every reason to believe that the accused have committed the offence punishable under Sections 8(c) read with 21(c), 22(c), 28 and 29 of NDPS Act, and that no reasonable grounds have been made to believe that the accused are not guilty of such offence.

15.The learned Special Public Prosecutor would submit that in respect of the petitioner in CrI.O.P.No.11934 of 2020 is concerned he is the person who sent the contraband to the other accused. He would further submit that from him/A4, consigner copy of L.R.No10166028 dated 11.03.2020 was recovered and the corresponding consignee copy of lorry receipt was recovered from A2 and A3. It is a clinching material to prove that R.Vadivel/A4 is the person who has sent consignment to other two accused. Further, it is not the case where the prosecution relies only on the Section 67 statement. This is the case where there is recovery of huge commercial quantity of banned substance and it is also corroborated by the statement recorded from the arrested accused under Section 67 of the NDPS Act. Apart from the lorry receipt, the mobile phone of the accused R.Vadivel was recovered and there is ample material to show that there was communication between the said R.Vadivel and Sai @ Thiyagarajan that the accused R.Vadivel had booked the consignment on 11.03.2020 and it has reached the Cargo Company at Chennai, on 12.03.2020. Further prior to booking the consignment the accused R.Vadivel had sent the photographs of the consignment to the other accused by whatsapp on 09.03.2020 at 7.15p.m., and thereafter, after packing the material, he had sent photographs of the consignment on 11.03.2020 at 02.15 p.m., from his mobile phone. Further after booking the consignment, he had sent the copy of the lorry receipt at 09.06 p.m on 11.03.2020. Further on earlier occasion on 11.12.2019 the said R.Vadivel had sent copy of his blank cheque relating to two accounts in Indian Overseas Bank, Villupuram Branch. Further, the whatsapp message would also show that the accused were in conscious and continuous touch with each other. Further, statement recorded from A2 Sai @ Thiyagarajan A3 R.Vadivel would go to show that they were conscious of the transactions and K.Sirajudeen is not only stated to have accompanied Sai @ Thiyagarajan he is also consciously aware of the

transactions and that he is person who has obtained the mould for the tablets from one Gopinath and the said Gopinath had been examined and he has stated that the mould has been given to K.Sirajudeen who had introduced himself as Mujith to him. Further, the Said Gopinath had identified that K.Sirajudeen is a person who has introduced himself as Mujith. The learned Special Public Prosecutor reiterated that there are clinching materials to show that the contraband containing commercial quantity of tramadol tablets was sent by accused R.Vadivel and received by Sai @ Thiyagarajan and K.Sirajudeen at Chennai. The accused Sai @ Thiyagaraan and K.Sirajudeen have confessed to the fact that they are aware that the consignment was banned substance. Further, A.Fisal Raja had admitted that apart from this transactions on earlier transaction the accused Sai @ Thiyagarajan and K.Sirajudeen had supplied tramadol tablets to him. Coming to the statement of Vipul Jain and Arul Prakasam and his wife Sengamalaim they were examined based only on the confession given by R.Vadivel. Further, there are materials to show that the accused R.Vadivel had sent a whatsapp message to the staff of the Vipul Jain asking for the availability of banned substance. Further, the said Arul Prakasam and his wife Sengamalam had admitted that the materials were supplied by accused R.Vadivel on behalf of his firm for manufacture of multivitamins tablets and that believing R.Vadivel that the tablets manufactures were multivitamin tablets, they had allowed him to manufacture tablets in their premises. He would further submit that whether the accused was in conscious possession of the drugs are not can be decided only during evidence let in during trial and it cannot be presumed at this stage of bail. He would further submit that it is not a case where the prosecution case rests only on the confession statements recorded under Section 67 of the NDPS Act whereas it is a case where huge commercial huge quantity of drug was recovered and there are also other materials on record to prima facie fix the accused. He would further submit that with regard to the grounds that the claim of the petitioners that they have no knowledge of the notification cannot be accepted and that ignorance law cannot be excused. He would further submit that as per Section 54 of the NDPS Act unless and until contrary is proved, it may be presumed that the accused have committed the offence. The accused have not made out a case otherwise. It is a case where possession is established and that there is ample evidence to show the accused R.Vadivel had sent the contraband through lorry transport and the accused Sai @ Thiyagarajan and K.Sirajudeen had received the contraband and once possession is established the Court can presume that the accused had culpable mental stage and have committed the offence.

16. He would further submit that in the light of the object of Section 37 of the NDPS Act in addition to the limitation provided under Cr.P.C, or any other law for the time being in force with regualting grant of bail, the Court cannot take liberal approach in the matter of bail under the NDPS Act and particularly when the seizure is of commercial quantity. He would further submit that the accused have not made any reasonable grounds for believing

that they are not guilty of such offence. He would further submit that the accused R.Vadivel is a person engaged in the business of Pharmaceutical industries and the he is not rustic villager and he is entitled and expected to be aware of various laws. Ignorance does not normally afford any defence under the Criminal law since the persons is presumed to know the law and thereby the accused cannot claim that they are not aware of the notification. Further, he submitted that the notification came to existence even during the year 2018 and the offence has been committed in the year 2020.

17. In support of the above submissions, the learned Special Public Prosecutor relied on the following decision:-

1. *Intelligence Officer vs, Selvi* reported in (2013 2 MLJ (Cri) 754 (paragraph 11 to 14)
 2. *(The Superintendent of Narcotics Control Bureau vs R.Paulsamy* reported in (2000 9 SCC 549
 3. *State of Kerala etc., Vs. Rajesh etc.,* reported in (2020 SCC online SC 81
 4. *Satpal Singh vs. State of Punjab* reported in (2018 13 SCC 813)
 5. *Ashok Kumar Sharma vs. State of Rajasthan* reported in (2013) 2 Supreme Court Cases 67
18. In *INTELLIGENCE OFFICER VS SELVI* reported 2013 2 MLJ (Cri) 754 it has been held (paragraph 11 to 14)

11.At this stage, it would be appropriate to extract Section 54 of NDPS Act, which reads as follows:

''54. Presumption from possession of illicit articles; In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of:-

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specifically designed or any group of utensils specifically adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactory''.

12. A close reading of the above said provision would clearly show that unless and until the contrary is proved, the presumption is that the accused has committed the offence under this Act. Though, in the instant case, the trial Court has rendered a finding that so far as these petitioners are concerned, they ought not to have carried the entire carry bags, the same can be proved only at the time of trial, particularly in the circumstances when the accused have not given the address and identification of the other accused person who have been referred to in their statements. In this regard, a reference could be placed in the judgment *Dharampal Singh v. State of Punjab* (2010) STPL (LE) 44317 (SC) as under:

''15. From a plain reading of the aforesaid it is evident that it creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence in case he fails to account for the possession satisfactory. Possession is a mental state and Section 35 of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact. The possession, therefore, has to be understood in the context thereof and when tested on this anvil, we find that the appellants have not been able to account for satisfactory the possession of opium.

16. Once possession is established the Court can presume that the accused culpable mental state and have committed the offence. In somewhat similar facts this Court had the occasion to consider this question in the case of *Madan Lal and Another v. State of H.P.*, (2003) 7 SCC 465, wherein it has been held as follows:

''26. Once possession is established, the person who claims that it was not a conscious possession has to establish, it because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.

27. In the factual scenario of the present case, not only possession but conscious possession has been established.

It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act''.

13. The dictum laid down in the said judgment is that once possession is established, it is for them to prove at the time of trial that such possession is not a conscious possession. Till such time it has to be presumed that the entire quantity of ganja is received only from the possession of the respondents. At this stage it would be appropriate to extract Section 35 of the NDPS Act, which reads as follows:

'35. Presumption of culpable mental state(1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the Act charged as an offence in that prosecution.

(2) For the purpose of this Section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability''.

14. A close reading of the above said provision would also show that the accused can prove the fact that he had no culpable mental state with respect to the Act charged as an offence in order to presume that the respondents had the mental state to carry less than the commercial quantity and till the said statement of the respondents is proved by way of evidence, the said statement has to be construed only as a probable defence. Therefore, in my considered opinion, the bail granted by the trial Court is not legally sustainable.

19. In (The Superintendent of Narcotics Control Bureau vs R.Paulsamy reported in (2000) 9 SCC 549 it has been held (para 5, 6)

5. This court has laid down the parameters to be followed while considering the application for bail moved by an accused involved in offences under the NDPS Act vide Union of India v. Ram Samujh [(1999) 9 SCC 429 : 1999 SCC (Cri) 1522 : JT (1999) 6 SC 397] . It is unnecessary for us to repeat those parameters over again. We have no doubt that learned Single Judge has not followed the aforesaid parameters in this case.

6. In the light of Section 37 of the Act no accused can be released on bail when the application is opposed

by the Public Prosecutor unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. It is unfortunate that matters which could be established only in offence regarding compliance with Sections 52 and 57 have been pre-judged by the learned Single Judge at the stage of consideration for bail. The minimum which learned Single Judge should have taken into account was the factual presumption in law position that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the learned Single Judge during bail stage regarding the compliance with the formalities mentioned in those two sections.

20. In *State of Kerala etc., Vs. Rajesh etc.*, reported in (2020 Supreme(SC) 69, the Apex court has held at (para 18 to 21)

18. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable. It reads thus:-

19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In *Union of India Vs. Ram Samujh and Ors.* 1999(9) SCC 429, it has been elaborated as under:-

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 CrPC, 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.

21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail. Its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

21. In SATPAL SINGH Vs. STATE OF PUNJAB reported in (2018 13 SCC 813) a three Judges of bench of the Apex Court has held (para 3)

3. Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27-A and also for offences involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and in case a Public Prosecutor opposes the application, the court must be satisfied that there are reasonable grounds for believing that the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Materials on record are to be seen and the antecedents of the accused is to be examined to enter such a satisfaction. These limitations are in addition to those prescribed under CrPC or any other law in force on the grant of bail. In view of the seriousness of the offence, the lawmakers have consciously put such stringent restrictions on the discretion available to the court while considering application for release of a person on bail. It is unfortunate that the provision has not been noticed by the High Court. And it is more unfortunate that the same has not been brought to the notice of the Court.

22. In Ashok Kumar Sharma vs. State of Rajasthan reported in (2013 2 Supreme Court Cases 67) the Apex Court has held (Para 8)

"We may, in this connection, also examine the general maxim ignorantia juris non excusat and whether in such a situation the accused could take a defence that he was unaware of the procedure laid down in Section 50 of the NDPS Act. Ignorance does not normally afford any

defence under the criminal law, since a person is presumed to know the law''.

23. Heard the learned counsel for the petitioners and the learned Special Public Prosecutor appearing for the respondent.

24. This Court perused the entire materials on record including the statement recorded under Section 67 of the NDPS Act from the petitioners and also from the other accused. This Court also carefully considered the judgments relied on by the learned counsel for the petitioners as well as the learned Special Public Prosecutor for NCB Cases. This is a case where commercial quantity of 22.695 kg of banned substances was seized from the accused. On specific information the respondent kept watch and they arrested two persons who had come to collect the contraband under the lorry receipt bearing L.R.No.10166028 dated 11.03.2020 at Chennai. Thereafter on the confession recorded from the arrested accused in Chennai and the consigner copy of the correspondieng Lorry Receipt was seized from A4 R.Vadivel at Villupuram. Subsequently the contraband had been subjected to chemaical analysis and it was found to be tramadol a bannded substance. There is prima facie materials to show that the consignment was booked by the petitioner in Crl.O.P.No.11934 of 2020 and received by the petitioner in Crl.O.P.No.11336 of 2020. Further, the statements recorded from K.Sirajudeen and Sai @ Thiyagarajan corroborates with the statement recorded from R.Vadivel. It was contended the counsel for the petitioner that the officer who are investigated with the powers under Section 53 of the NDPS act are '' Police Officers within the meaning of Section 25 of the Evidence Act). As a result of which in confessional statement made to them would be barred under provision Section 25 of the Evidence Act and it cannot be taken into account in order to convict an accused under the NDPS Act and further the statement recorded under Section 67 of NDPS Act cannot be used as confessional statement in the trial of offence under the NDPS Act.

25. This Court is of the opinion that the evidentiary value of the confessional statement recorded from the accused and it is admissibility can be tested at that time of trial while letting in evidence. However, in this case dehors the alleged confessional statement recorded from the accused under Section 67 of the NDPS Act there are other prima facie materials to show that R.Vadivel is the person who has booked contraband from Villupuram and K.Sirajudeen and Sai @ Thiyagarajan are the persons who have received it at Chennai. Further, there are materials to show that the accused were in constant touch with each other through whatsapp. Further, one Gopinath had stated that the moulds were supplied by him to K.Sirajudeen who had identified him to be one Mujith to him. Later, the said Gopinath had identified that K.Sirajudeen is the person who had introduced him to be Mujith. Further, Arul Prakasam and wife Sengamalam have stated that they had allowed the accused to manufacture tablets in their factory on the belief they were multivitamins tablets and that they were not

aware that they were banned substance. Further, there is material to show that the accused R.Vadivel had sent a message to staff of Vipul Jain asking about the availability of banned substance when such being so, there are materials available other than the confession statement to link the accused to the offence.

26. In view of the reasons stated above, the petitioners have not made out any reasonable ground for believing that they are not guilty of such offence and that they are not likely to commit offence while on bail and thereby, these applications for bail stand dismissed.

27. It is made clear that none of the observation made in this bail orders shall have any bearing on the trial since it is only for the purpose of deciding the bail petitions.

-sd/-

23/12/2020

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 INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE,
G.N.CHETTY ROAD, T. NAGAR, CHENNAI-17.

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

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

CC to J.WILLIAM SHAKESPHERE Advocate on payment of necessary charges

CC to S.SARAVANAKUMAR Advocate on payment of necessary charges

CRL OP.11336 & 11934/2020

Date :23/12/2020