



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2020

CORAM :

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

Crl.O.P.No.12195 of 2020

Amsath Khan
S/o.Kader Meera

... Petitioner

Vs.

State by
The Intelligence Officer
Directorate of Revenue Intelligence
Chennai Zonal Unit
27, G.N.Chetty Road
T.Nagar, Chennai 600 017
(R.R.No.08 of 2019 F.No.DRI/CZU/
VIII/48/ENQ-1/INT-24/2019)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in C.C.No.10 of 2020 pending on the file of the 1st Additional Special Judge for NDPS Act Cases, Chennai.

For Petitioner : Mr.R.Vijayakumar

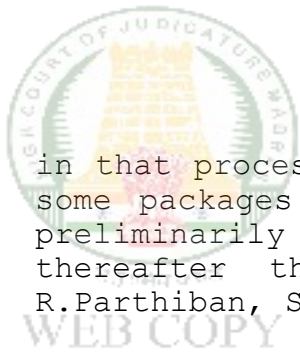
For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 25.07.2019 for the offences punishable under Section 20, 23, 28 and 29 r/w Section 8(c) of NDPS Act 1985 r/w Section 135 of the Customs Act, seeks bail.

2.The case of the prosecution is that on 24.07.2019 at night hours around 7.45 p.m, one Chetan Sharma, Intelligence Officer is said to have received information that the petitioner was carrying Narcotic drug "Hashish" and was planning to smuggle the same to Malaysia by Batik Airways flight ID 6019 at Chennai Airport to leave for Kuala Lumpur and that the team of Directorate of Revenue Intelligence headed by P.C.Balasubramaniam. Hazarilal and others reached International Airport and found the accused near the immigration and interrogated him and after having come to a conclusion about the alleged possession of Hashish, brought the checked in baggages (two pieces) from the Aircraft and the petitioner was taken to the Customs AIU for further interrogation and



in that process they found that one of the checked in bags contained some packages of Hashish, a narcotic drug and the same was tested preliminarily by the respondent and found that it was Hashish and thereafter the contraband was seized in the presence of one R.Parthiban, Senior Intelligence Officer, DRI.

3.The learned counsel appearing for the petitioner would submit that the petitioner is stated to have been intercepted on 24.07.2019 at Anna International Airport during night hours at 10.00 p.m but the arrest was shown on next day i.e. 25.07.2019 at 3.45 p.m. It is nothing but a deliberate act of the respondent to obtain statement U/s.67 of NDPS Act. He would further submit that it is the case of the prosecution that the petitioner was intercepted while he was about to board in the Aircraft and after clearing customs and immigration and that the baggage was stated to have been checked in already and there is no evidence to show how and by whom the baggage while was already checked in was brought before the respondent for checking. Admittedly even as per the case of the prosecution, the contraband does not belong to the petitioner and it had been handed over by some unknown person and no investigation has been done with regard to that aspect. Except the alleged statement obtained from the petitioner U/s.67 of NDPS Act, no other material is available to fix the petitioner in this case.

4.Per contra, the learned Special Public Prosecutor would submit that based on the specific information and in the presence of two independent witnesses, the accused was intercepted at the boarding gate with two checked in baggages tags bearing No.ID701295 and ID701296 on the boarding pass. After persistent enquiry, the petitioner admitted that he is carrying 1.5 Kgs Hashish (commercial quantity) in the checked-in luggage. Thereafter the checked-in baggage was de-boarded by following proper procedure of security clearance. He further submitted that the petitioner was a frequent flier to Kuala Lumpur as a carrier and he was intercepted on 24.07.2019 when he was preparing to leave Chennai Airport to board the Flight and he also had admitted to have received a sum of Rs.20,000/- for carrying the baggage. He would further submit that the contraband was subjected to chemical analysis and it is proved that it is a "tetra hydro cannabinol". He would further submit that at the stage of consideration of bail application, the Court has to see whether the requirements and limitations placed under Section 37 of NDPS Act are satisfied. In this case, the respondent have sufficient material to prove the guilt of the accused. In support of his contentions he relied upon the judgment reported in 2020 SCC Online SC 81(State of Kerala etc., Vs. Rajesh etc) the relevant paragraphs which read as follows:

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:-

"37. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

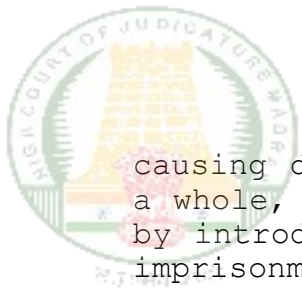
(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail."

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 v. Ram Samujh*, (1999) 9 SCC 429, it has been elaborated as under:-

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. Chief Secy., Union Territory of Goa* [(1990) 1 SCC 95] as under:

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace,



causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

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.

5. Heard the counsel on either side and perused the materials placed on record.

6. The purport of Section 37 of NDPS Act reveals that the exercise of power to grant bail is not only subject to the



limitations contained U/s.439 of Cr.P.C. but also subject to the limitation placed by Section 37 of NDPS Act, which commensurates with the non obstante clause. At this stage, firstly, it is mandatory that the prosecution must be given an opportunity to oppose the bail application and secondly the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence. If either of these two conditions are not satisfied, the bar for granting bail operates. Though the learned counsel for the petitioner raised various grounds while arguing in the opinion of this Court, they are all matters for evidence to be raised at the appropriate stage during trial and the petitioner has not made out reasonable grounds for grant of bail.

7. In view of the above observations, this bail petition stands dismissed. However, direction is issued to the 1st Additional Special Judge for NDPS Act Cases, Chennai. to complete the trial in the case as expeditiously as possible, preferably within a period of six months from the date of normal resumption of functioning of Courts.

-sd/-
15/09/2020

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 IST ADDITIONAL SPECIAL JUDGE
FOR NDPS ACT CASES, CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT
CENTRAL PRISON, PUZHAI,

4 THE INTELLIGENCE OFFICER
DIRECTORATE OF REVENUE INTELLIGENCE,
CHENNAI ZONAL UNIT, 27, G.N.CHETTY ROAD,
T.NAGAR, CHENNAI - 600 017.

CC to M/S.R.VIJAYAKUMAR Advocate on payment of necessary charges

CRL OP.12195/2020

Date :15/09/2020

RD 25/09/2020