

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

Cr1.O.P.No.645 of 2021

P.Sarathkumar

... Petitioner

Vs.

Union of India,
rep. By the Intelligence Officer,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
27, G.N.Chetty Road,
T.Nagar, Chennai
(F.No.DRI/CZU/VIII/48/ENQ-1/INT-04/2020) ... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in C.C. No.40 of 2020 (F.No.DRI/CZU/VIII/48/ENQ-1/INT-04/2020) pending investigation on the file of the Respondent.

For Petitioner : Mr. M.Palanivel

For Respondent : Mr.M. Venkateswaran

O R D E R

(The case has been heard through video conference)

The petitioner, who wasg arrested and remanded to judicial custody on 10.03.2020 for the offence punishable under Sections 8(c) r/w 9A, 21, 25A, 28 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 in C.C. No.40 of 2020 (F.No.DRI/CZU/VIII/48/ENQ-1/INT-04/2020), seeks bail.

2. The petitioner is the sole accused in this case. The case of the prosecution is that an exporter M/s.SNR Exim Enterprises, Chennai, exported polyester sarees to Malaysia. On suspicion, when the respondent examined the consignment, they found that 49.898 kgs. of Pseudo Ephedrine, is concealed in the polyester sarees. Hence, a case was registered, and the petitioner was arrested and remanded to judicial custody on 10.03.2020. Now, he has filed this petition seeking for bail.

3. The learned counsel appearing for petitioner would submit that the petitioner is only an agent handling with the goods and he is not aware of fact that the consignment contained 49.898 kgs. of pseudo ephedrine in the polyester sarees. He would submit that later, he came to know that the consignment has been sent by one Rajesh Kanna, Mannady, Chennai, apart from that, he was not aware of any exporting of pseudo ephedrine. He would submit that he is an innocent person and he is no way connected with the occurrence as alleged in the complaint. He would submit that he has been falsley implicated in this case and the petitioner is in jail for nearly one year. He would also submit that the investigation is also completed. Hence, he prays for grant of bail to the petitioner.

3. The learned Additional Public Prosecutor would oppose the petition on the ground that the petitioner was the of 49.898 kgs. of pseudo ephedrine concealed in the polyester sarees. He would submit that even though the petitioner has stated that he is only an handling agent and he is not aware of the consignment, investigation reveals that his statement is false and it also found that the petitioner is the original exporter of the contraband. He would also submit that now the investigation is almost completed, complaint has been taken cognizance and two witnesses were examined and opposed to grant bail to the petitioner.

5. Considering the said facts and circumstances of the case and that the petitioner alleged to have exported 49.898 kgs of substance called pseudo ephedrine, which falls under Section 9-A of NDPS Act, punishable under Sec.25(a) of the NDPS Act. Now, it is also stated that the investigation completed, the complaint has been taken cognizance, and now two witnesses were examined. Therefore, considering the fact that the petitioner is in jail from 10.03.2020, and he has no bad antecedents.

*[6. This petition has been listed under the caption "for being mentioned".

7. On 08.02.2021, the bail petition came up for hearing, this Court after considering the arguments of the learned counsel for the petitioner and the learned Special Public Prosecutor for the respondent, granted bail. At the time of granting bail, considering the quantity of material seized, this Court did not consider the applicability of Section 37 of NDPS Act. Hence, the matter is posted today under the caption 'for being mentioned' and heard the learned counsel for the petitioner and respondent on that aspect.

8. The learned counsel for the petitioner would submit that the contraband seized from the petitioner was "Pseudo Ephedrine", it is only a controlled substance. It is neither a Narcotic Drug nor Psychotropic Substance. Hence, the provision of Section 37 would not be applicable to this case. In support of his contention, the learned counsel for the petitioner has relied upon the order passed by this Court in CrI.O.P.No.26320 of 2010 dated 19.11.2010.

9. Mr.Venkateswaran, the learned Special Public Prosecutor fairly submitted that the contraband seized from the petitioner is not a psychotropic substance and it is not covered under Section 37, and it falls under Section 9A of the Act which attracts punishment under Section 25-A of the Act. Hence, the provision of Section 37 of NDPS Act is not applicable to the present case.

10. Considering the above circumstances, the provision of Section 37 is not applicable to the contraband seized from the petitioner. That apart, now it is stated that the trial has commenced and three witnesses have been examined and four witnesses are yet to be examined and also the petitioner is in jail from 10.03.2020, this Court is inclined grant bail to the petitioner subject to certain conditions.]

*Clarified as per order dated 09.02.2021

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner, on his release from prison, shall report before the trial court daily at 10.30 a.m. on all working days until further orders;

(d) the petitioner shall not commit any offences of similar nature;

(e) the petitioner shall not abscond either during investigation or trial;

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

6. With the above directions, this Criminal Original Petition is ordered.

-sd/-
08/02/2021

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,
II ADDITIONAL SPECIAL COURT FOR EXCLUSIVE
TRIAL OF CASES UNDER NDPS ACT, CHENNAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

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

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

+1 CC to M/S.A.ASRARUL HAQ Advocate on payment of necessary charges SR.NO.1269

WEB COPY

CRL OP.645/2021

Date :08/02/2021

cs 10/02/2021