

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
08.04.2021	16.04.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO. 2784 OF 2021

Ashraff Shariff

.. Petitioner

- Vs -

The Union of India
rep. By its Intelligence Officer
Narcotics Control Bureau
Chennai Zonal Unit
Chennai.

.. Respondent

Criminal Original Petition filed u/s 439 Cr.P.C. praying this Court to enlarge the petitioner on bail in C.C. No.115 of 2019 pending on the file of the learned Principal Judge's Court, Special Court for NDPS Cases Chennai.

For Petitioner : Mr. Rupert J. Barnabas

For Respondent : Mr. N.P. Kumar, Spl. PP (NCB Cases)

ORDER

The petitioner was arrayed as the sole accused in C.C. No.115 of 2019 for the offences u/s 8 (c) r/w Sections 22 (c), 28 and 29 of the NDPS Act. It is the case

of the respondent herein that on 1.1.2019, at about 2.00 a.m., information was received relating to the petitioner indulging and peddling in large quantity of drugs, which were alleged to have been concealed in his house. Based on the said information, a team was formed on the directions of the Superintendent of NCB and based on the said direction, the respondent, along with other officers, proceeded to raid the residence of the petitioner at Royapettah at about 5.00 a.m. on the said date. The seizure witnesses were, who were standing enroute the raiding party, were also taken along with them after detailing the mission to them.

2. The raid was conducted in the premises of the petitioner in his absence by the investigating officer during which time, a orange and black I KALL Cell Phone was found inside the bureau and an examination of the cell phone revealed 20 stamps like pre paper cuts inside the battery chamber of the phone, which were suspected to be LSD and, therefore, the said contraband were seized under the cover of mahazar, attested by witnesses on 1.1.19. On 3.1.19, the petitioner appeared on his own volition before the police and he was arrested and since then the petitioner is under incarceration.

3. The above stand of the respondent was countered by the petitioner by averring that in his absence and when only his mother was available on 31.12.18, at about 10.30 p.m., the officers of NCB came to his house and ransacked the house and when his father came home, his father found some of the officers of NCB were meddling with the bureau and, thereafter, finding nothing, the respondent left the house. It is further averred by the accused that, thereafter, on the early morning hours on 1.1.19, at about 5.45 a.m., the respondent once again came to the house of the accused and caused a search, more especially of the bureau, where some of the officers were meddling in the morning and from there, they had allegedly recovered the contraband, whereinafter, the father of the accused was arrested and confined illegally questioning about the whereabouts of his son. In view of the threatening meted out to his father, the accused had appeared before the respondent, which resulted in his arrest and release of his father and that the accused has been under confinement since then for over two years.

4. Learned counsel appearing for the petitioner that the I KALL cell phone, which was allegedly said to have been recovered from the house of the petitioner/accused does not belong to him and that the Vodafone SIM card does not stand in his name, but belongs to one Ms.Elina Sanyal, a resident of Maharashtra with whom the petitioner has no connection. It is the submission of the learned counsel for the petitioner that the ownership of the said SIM Card had been admitted by the Nodal Officer of Vodafone through letter dated 27.3.19 to the investigating officer.

5. It is the further submission of the learned counsel for the petitioner that the mandatory report of the respondent is silent as to how the I KALL cell phone with SIM card belonging to a person in Pune found its way to the house of the accused. It is further submitted that the said I KALL cell phone has not been placed before the court as a material object and the said cell phone is untraceable, which clearly shows that the seizure itself is fake. Further, the cell phone has been replaced with two different cell phones of other brands as the phones from which the contraband was seized and that the ownership of the said two cell phones also have not been revealed. It is the further submission of the

learned counsel for the petitioner that the quantity of contraband alleged to have been seized is shown in varied quantities in the different reports and the glaring inconsistency in the quantity of contraband, said to have been seized, creates a grave doubt about the veracity of the prosecution case. In fine, it is the submission of the learned counsel for the petitioner that there are very many glaring inconsistencies in the version projected by the prosecution relating to the seizure of the alleged contraband and nexus of the petitioner/accused with the alleged contraband and also with the cell phone from which it is alleged to have been seized and in such a backdrop, the petitioner languishing in prison for the past two years, is entitled to the benefit of bail and, accordingly, prays for grant of bail to the petitioner/accused on such conditions as this Court may stipulate.

6. Per contra, learned Special Public Prosecutor appearing for the respondent refuted the contentions advanced on behalf of the petitioner and submitted that the father of the petitioner, on his own volition, had admitted the illegal act of the petitioner in the procurement, sale and usage of contraband. It is further submitted on behalf of the respondent that the petitioner is a habitual offender and that a case relating to possession of contraband (Charas) to the

extent of 1.200 Kgs., is pending in Crime No.10/2018 on the file of the District & Sessions Court, Panaji for the offences u/s 20 (b) (ii) (c) of NDPA Act. It is further submitted that the stand of the petitioner that the phone and the SIM cards does not belong to him is totally false and has been made only for the purpose of wriggling out from the offence and that the prosecution has tabled enough material before the trial court with regard to the ownership of the mobile and the SIM cards as also the seizure of the same and that the contention of the petitioner that the Vodafone SIM card belongs to one Elina Sanyal is not substantiated by any materials by the petitioner. In fine, it is the submission of the learned Special Public Prosecutor that the petitioner, having been in possession of commercial quantity of the contraband, is not entitled to grant of bail and that any bail at this point of time would hamper the progress of the trial and, therefore, prayed for rejection of this petition. Additional counter affidavit has also been filed by the respondent, which is on similar lines with regard to the averments in the counter affidavit.

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7. This Court gave its thoughtful consideration to the contentions advanced by the learned counsel on either side and also perused the materials available on record.

8. It is not in dispute that any quantity in excess of 0.002 gms., of LSD is codified as commercial quantity, vide notification issued by the competent authority. Though it is the contention of the learned counsel for the petitioner that there is discrepancy in the quantity of contraband, alleged to have been seized from the petitioner/accused, however, it is seen from the materials available on record, as also the affidavit filed by petitioner, though discrepancy is alleged, without admitting even if it is presumed that there is discrepancy in the quantity, yet, the quantity is well past the small quantity and the alleged quantity is very much a commercial quantity, which cannot be had by the petitioner without any authority of law. Therefore, the discrepancy pointed out by the petitioner in the quantity cannot be a ground to doubt the veracity of the prosecution case at this stage and to grant bail to the petitioner and, therefore, the said contention deserves to be rejected.

9. Insofar as the contention that the Vodafone SIM card does not belong to the petitioner and so also the orange and black colour I KALL cell phone and that it belongs to one Elina Sanyal, it is to be pointed out that no material whatsoever has been placed by the petitioner to show that the said SIM card and cell phone were not used by him. Though it is contended by the petitioner that the same was planted by the respondent in the house of the petitioner on the morning of 31.12.18 to be later recovered on the early hours of 1.1.19, yet no complaint was made in that regard by the petitioner to any law enforcing agency and also no material has been placed to show that the respondent had carried out an act of searching the premises of the petitioner on the morning of 31.12.18. On the contrary, it is the case of the prosecution that the cell phone was recovered from the house of the petitioner and that the father and brother of the petitioner had also given statements about the habit of the petitioner in consuming narcotics and also dealing with contraband. Such being the case, the contention of the petitioner with regard to the authenticity of the cell phone, has to be tested only at the time of trial through oral and documentary evidence, when according to the prosecution, the service providers have provided details

about the SIM cards, which were found in the I KALL mobile phone as having been procured in Chennai.

10. Further, it is to be pointed out that this is not the only case in which the petitioner has been arrested. A case has been registered against the petitioner in the District & Sessions Court, Panaji, for similar offence relating to illegal possession of Charas to the extent of 1.200 Kgs., and that the petitioner had suffered incarceration there and was released on bail only in the month of December, 2018. Therefore, it is not as if the petitioner is possessed of a clean slate against his name. Further, it is to be pointed out that the petitioner has not disputed about the factum of the said case pending against him with regard to a similar offence before the District & Sessions Court at Panaji.

11. Further, as rightly pointed out by learned Special Public Prosecutor, the quantity of contraband seized from the mobile phone, which is alleged to belong to the petitioner, being a commercial quantity, Section 37 of the NDPS Act squarely gets attracted and, therefore, the prayer for grant of bail cannot be acceded to.

12. Though the petitioner has submitted before this Court, an affidavit from his father controverting the stand of the respondent with regard to the voluntary statement said to have been given by his father as to the habit of the petitioner in consumption of drugs and also peddling with drugs, however, it is to be pointed out that the said affidavit cannot be taken at this point of time for the purpose of granting bail to the petitioner and the same can be gone into only at the time of trial.

13. For the reasons aforesaid, this Court is not inclined to grant bail and, accordingly, this criminal original petition is dismissed.

16.04.2021

Index : Yes / No

Internet : Yes / No

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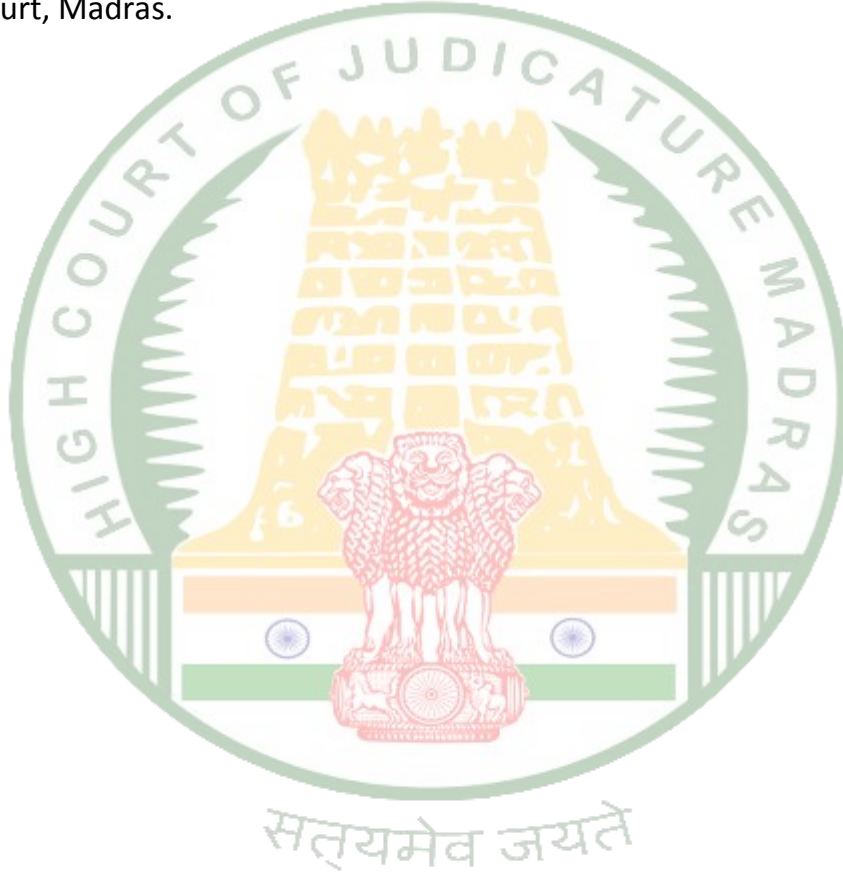
To

1. The Principal Judge
Special Court for NDPS Cases
Chennai.

10/12

2. Intelligence Officer
Government of India
Narcotics Control Bureau
Chennai Zonal Unit, Chennai.

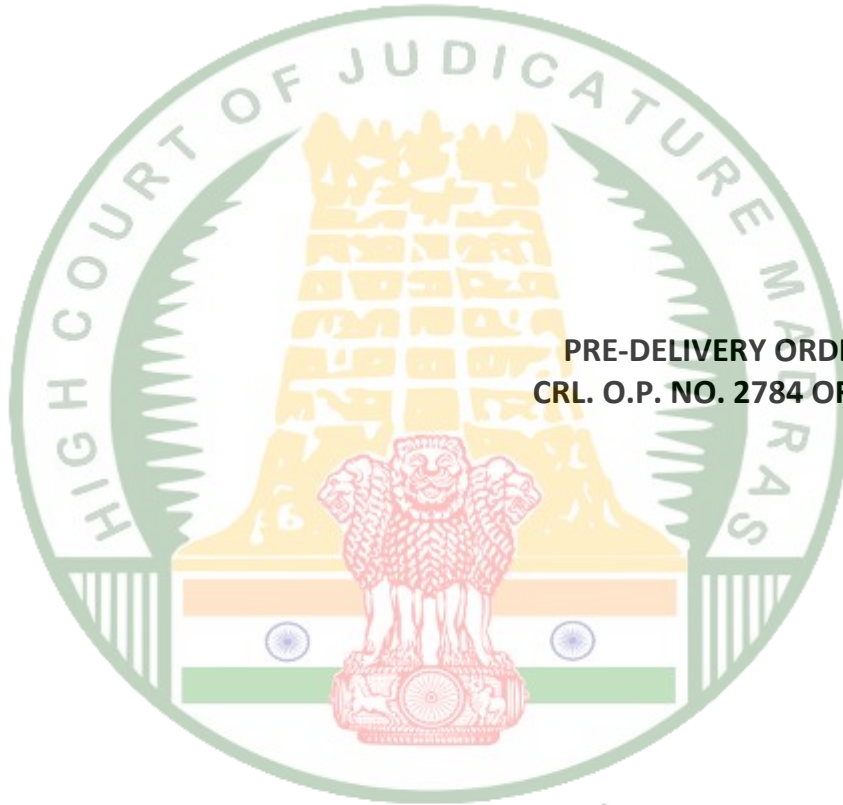
3. The Public Prosecutor
High Court, Madras.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
CRL. O.P. NO. 2784 OF 2021**

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**Pronounced on
16.04.2021**

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