

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Fifth day of March Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL ORIGINAL PETITION No.4021 of 2021

IN C.C.NO.103 OF 2020

[ON THE FILE OF RESPONDENT POLICE]

SAI @ THIYAGARAJN

[PETITIONER / ACCUSED-2]

Vs

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

For Petitioner : M/S.S.JOEL Advocate

For Respondent : MR.N.P.KUMAR Special Public Prosecutor (DRI)

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who was arrested and remanded to judicial custody on 13.03.2020 for the offence punishable under Sections 8(c) of NDPS Act 1985 (as amended) and Sections 22(c), 28, 29 and 31 of NDPS Act, 1985 (as amended), seeks bail.

2.The case of the prosecution is that the petitioner along with other accused indulged in illicit manufacturing and transporting of commercial quantity of tramadol tables covered under NDPS Act. The respondent after completing investigation has filed the final report against the petitioner and the other accused for the offence under Section 8(c) of NDPS Act 1985 (as amended) and Sections 22(c), 28, 29 and 31 of NDPS Act, 1985 (as amended). This is the second application for bail.

3.Learned counsel appearing for the petitioner would submit that the petitioner had earlier approached this Court in CrI.O.P.No.11336 of 2020 and this Court by order dated 23.12.2020 had dismissed the earlier bail application filed by the petitioner. He would submit that the respondent after filing of the final report, has filed a petition before the trial Court seeking permission to send the

electronic device to the forensic examination and that in the petition it has been stated that only an interim complaint has been filed by the respondent on 1st September, 2020. When such being the case, the petitioner is entitled to statutory bail. He would further submit that there is discrepancy in the weight of the contraband. As per the lorry receipt the weight of the contraband is stated to be 30 Kilograms at the time of booking, whereas at the place of recovery only 23.850 kilograms of contraband is alleged to have been recovered and thereby making the case of the prosecution highly suspicious and doubtful with regard to the contraband and thereby there is every chance of the petitioner getting acquitted. He would thereby seek for bail.

4.The respondent has filed a counter. In the counter it has been stated that this Court taking into consideration the very same plea made in the earlier bail petition in Crl.O.P.No.11336 of 2020 had dismissed the bail application on merits by a detailed order dated 23.12.2020.

5.Mr.N.P.Kumar, Special Public Prosecutor (DRI) would submit that the weight of the consignment shown in the lorry receipt is inclusive of the carton boxes and in the lorry office if a consignment is booked in excess of the prescribed quantity of 5 Kg, it will be rounded off to a next higher weight of 5 Kg. In this case, the weight of the consignment including the box and the contraband was more than 25 Kg and thereby it had been rounded off to 30 Kg. Further the same plea was advanced in the earlier petition and this Court taking into consideration the aspects and finding that the quantity of the contraband is commercial and taking into consideration the fact that the petitioner has not satisfied the dual conditions u/s.37 of the NDPS Act, has dismissed the earlier bail application. He would submit that there is no change of circumstances. Further, he would submit that the respondent have taken steps to send the mobile phones for forensic examination and that the term "interim complaint" referred at paragraph 8 of the petition is a mistake and the petition has been filed seeking permission for getting the scientific report. The complaint has been filed within time and the trial Court has taken cognizance and the case is pending in C.C.No.103 of 2020.

6.Heard the counsels.

7.On the earlier occasion, the same plea was raised with regard to the alleged discrepancy in the weight of the contraband. This Court after considering the plea, finding that it is a case of commercial quantity and that the petitioner has not satisfied the requirement u/s.37 of NDPS Act, had dismissed the earlier bail application by order dated 23.12.2020. Further, now it has been reiterated by the learned Special Public Prosecutor that the final report has been filed and the case is pending in C.C.No.103 of 2020

and that the reference at paragraph No.8 of the petition to send the phone for forensic examination and that "an interim complaint" has been filed is only a mistake. Further, before this Court the very same plea with regard to the discrepancy in weight has been raised earlier and it has been considered and the bail application has been dismissed. There is no change of circumstances.

8.This Criminal Original Petition stands dismissed accordingly.

-sd/-
05/03/2021

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 SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

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

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

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

सत्यमेव जयते

CRL OP.4021/2021

Date :05/03/2021

cs 15/03/2021

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