

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
19.04.2021	28.04.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO. 6463 OF 2021

Sridhar Balakrishnan .. Petitioner

- Vs -

State, by
The Intelligence Officer
Directorate of Revenue Intelligence
Chennai Zonal Unit
No.27, G.N. Chetty Road
T.Nagar, Chennai 600 017. .. Respondent

Prayer: Criminal Original Petition filed u/s 439 Cr.P.C. praying this Court to enlarge the petitioner on bail in C.C. No.14 of 2020 on the file of the II Addl. Special Judge, EC & NDPS Act Cases at Chennai.

For Petitioner :Mr. G.Murugendran

For Respondent :Mr. N.P. Kumar, Spl. PP, DRI Cases

ORDER

It is the case of the petitioner that based on specific information that Methamphetamine is being illicitly carried by A-1, the Officers of DRI intercepted A-1, viz., Boominathan and one Valli while they were boarding a bus and after due enquiry, seized 10.561 Kgs., of substance, alleged to be Methamphetamine, a psychotropic substance and a mahazar was drawn by the respondent. Pursuant to the drawal of the mahazar, while A-1 was arrested and remanded to custody, the said Valli, was released. Subsequent to investigation and interrogating A-1, based on information given by A-1, the officers of DRI visited the house of the petitioner and from there seized 1475 gms., of white crystalline powder, alleged to be

Ketamine along with Indian currency to the tune of Rs.24,96,000/- and also a Ford Eco Sports Car bearing Regn No.TN-10-AM-9777, which was alleged to have been used for the purpose of trafficking in narcotics. The statement of the petitioner was recorded and the petitioner was remanded to judicial custody.

2. It is the further averment of the petitioner that though the white crystalline powder was alleged to have been Ketamine, but the chemical analysis report returned a negative for the said seizure made at the house of the petitioner. It is the further averment of the petitioner that the amount of Rs.24,96,000/- alleged to have been the sale proceeds of drug trafficking, no material whatsoever has been placed by the respondent and allegations would not partake the character of proof. In view of the above, the remand of the petitioner is per se unsustainable and the rejection of the application for bail by the court below is on erroneous appreciation of materials and, therefore, the present petition is filed seeking the relief supra.

3. Learned counsel appearing for the petitioner vociferously contended that the petitioner has been implicated in the present case without any tangible material and that the statement of the petitioner recorded u/s 67 of the NDPS Act cannot be acted upon to remand the petitioner in judicial custody. It is the submission of the learned counsel for the petitioner that the statement recorded u/s 67 cannot be taken into account for the purpose of remand and more so when the material alleged to have been seized from the petitioner has been negated to be Ketamine. It is the further submission of the learned counsel for the petitioner that the seizure and recovery alleged to have been made from the house of the petitioner does not satisfy the mandatory provision u/s 42 of the NDPS Act.

4. It is the further submission of the learned counsel for the petitioner that the charge of conspiracy put forth has not been established and in the absence of establishing the conspiracy charge, relying upon the uncorroborated statement of A-1 to implicate the petitioner is wholly impermissible. The conspiracy between the petitioner and A-1, Boominathan should be proved by substantial material and in the absence of the same, relying upon the evidence of Boominathan, viz., A-1, which statement is also hit u/s 67 of the NDPS Act, remanding the petitioner to judicial custody cannot be sustained.

5. Learned counsel for the petitioner also strenuously contended that the arrest of the petitioner has been done by an

officer, who is not invested with powers u/s 42 of the NDPS Act and, therefore, the said arrest cannot be sustained.

6. In aid of his submissions, very many decisions of the Hon'ble Apex Court have been relied on by the learned counsel to substantiate his case that the prosecution/respondent has not placed any substantial material to show that a prima facie case exists against the petitioner. Accordingly, he pleads that the petitioner be released on bail by this Court.

7. Per contra, learned Special Public Prosecutor appearing for the respondent vehemently opposed the plea made by the petitioner and submitted that though the statement recorded u/s 67 is barred for being placed reliance upon, however, it is not on the said statement that reliance has been placed by the court below to negative the case for bail to the petitioner. It is the submission of the learned Special Public Prosecutor that the seizure and recovery of contraband from A-1 is reflected in the mahazar, which was prepared at the place, where the contraband was seized and similarly insofar as the contraband seized at the residence of the petitioner, mahazar was prepared at the residence of the petitioner, which has been attested by witnesses. The mahazar being the first of the documents to have come into existence relating to the seizure of contraband, which has been recorded in the presence of witnesses, the stand of the petitioner that his continued incarceration on the basis of his statement recorded u/s 67 of the NDPS Act is impermissible, pales into insignificance.

8. It is the further submission of the learned Special Public Prosecutor that the conspiracy between the petitioner and A-1 has been proved through the call records, which have been placed before the court below by the respondent and that the seizure of 10.61 Kgs., of Methamphetamine, made through mahazar is over and above the commercial quantity prescribed and, hence, Section 37 of the NDPS Act would stand attracted. Once the conspiracy between the petitioner and A-1 has been proved through relevant call records and the quantity of Methamphetamine seized from A-1 being more than the commercial quantity, the plea of the petitioner for bail is hit by Section 37 of the NDPS Act.

9. It is the further submission of the learned Special Public Prosecutor that the arrest of the petitioner has been done by the appropriate officer, who has been invested with power and, therefore, the said arrest cannot be termed to be improper. On the above submissions, learned Special Public Prosecutor opposed grant of bail to the petitioner.

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record, as also the very many decisions relied on by the learned counsel for the petitioner, which finds place in the affidavit filed in support of the petition.

11. The main contention which has been placed before this Court by the petitioner is that the remand has been made on the statements alleged to have been made by the petitioner u/s 67 of the NDPS Act and in view of the decision of the Hon'ble Apex Court in Tofan Singh - Vs - State of Tamil Nadu (2020 SCC OnLine SC 82), the remand of the petitioner is wholly unsustainable.

12. A perusal of the majority decision in Tofan Singh's case (supra) reveals that a categorical finding has been recorded by the Hon'ble Apex Court that the statement recorded u/s 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act as the officers, who are invested with powers u/s 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act. This Court is in respectful agreement with the law laid down by the Apex Court.

13. However, the whole gamut of facts pertaining to the arrest and remand of the accused does not pertain only to the statement recorded u/s 67 of the NDPS Act. A careful perusal of the records reveal that at the time of interception of A-1 and seizure and recovery of contraband from A-1, mahazar was prepared in the presence of witnesses in which the details of the contraband seized along with the place of seizure has been clearly mentioned. Similarly, the recovery and seizure of contraband from the residence of the petitioner also shows that a mahazar was prepared at the place from where the contraband was seized, which was prepared in the presence of witnesses. Both the mahazars reveal that contraband was seized from the particular place in which A-1 and the petitioner were present. The statement of the petitioner as well as A-1 follows only after preparation of the mahazar and when the details have been scrupulously dovetailed in the mahazar, there was no necessity to rely on the statement of the petitioner, recorded u/s 67, which is hit by Section 25 of the Evidence Act, for the purpose of remanding the petitioner.

14. Though it is contention of the petitioner that there are no reasonable grounds to deny bail and the court below has got carried away by extraneous considerations and that the alleged contraband seized from the house of the petitioner has not been shown to be Ketamine and, therefore, the petitioner is

entitled for bail, as Section 37 of the NDPS Act would not stand attracted, however, it is to be pointed out that the nexus between A-1 and the petitioner has been prima facie established by the respondent through the various communications that transpired between the petitioner and A-1. It is further evident from the record that the amount of contraband seized from A-1 is beyond the commercial quantity. In the above backdrop, once the nexus between A-1 and the petitioner stood prima facie established, A-1 being found in possession of contraband much beyond the commercial quantity and that the said contraband has been shown to be Methamphetamine on the basis of the chemical analysis report, the contention of the petitioner that there are no materials connecting A-1 with the petitioner and that the contraband seized from A-1 in no way connects the petitioner with A-1 does not merit acceptance.

15. From the above, it is plainly evident that the quantity of contraband seized from A-1 is much beyond the commercial quantity as envisaged u/s 37 of the NDPS Act and the nexus between A-1 and the petitioner stood established through the call records, the conspiracy theory put forth by the respondent cannot be brushed aside and, therefore, the relief of bail sought for by the petitioner gets squarely hit by Section 37 of the NDPS Act and, therefore, the prayer for grant of bail cannot be acceded to.

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

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The II Addl. Judge
Special Court for EC & NDPS Act Cases
Chennai.
2. The Intelligence Officer
Directorate of Revenue Intelligence
Chennai Zonal Unit, 27, GN Chetty Road, T.Nagar,
Chennai 600 017.

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JPII(CO)

RMP(07/05/2021)