

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
16.06.2021	22.06.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.7347 OF 2021

Mehul Bafna

.. Petitioner

- Vs -

The Intelligence Officer
NCB, Chennai Zonal Unit
Ayapakkam, Ambattur
Chennai.

.. Respondent

Criminal Original Petition filed under Section 439 Cr.P.C. Praying this Court to enlarge the petitioner on bail in connection with C.C. No.105 of 2020 pending on the file of the Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr. N.Manokaran

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

ORDER

The petitioner, who was arrayed as A-1 in C.C. No.105 of 2020, on the file of the Principal Special Court under EC & NDPS Act, Chennai, has filed the present petition seeking bail.

2. It is the case of the prosecution that on information that A-2 would come get in touch with A-1 at a designated spot at about 7.30 p.m. On 14.3.20 and hand over a cover to A-1, containing Lysergic Acid Diethylamide (LSD Stamps), the officials of the Narcotics wing, on vigil, intercepted the accused and A-2, while escaped from the scene of occurrence, the petitioner, viz., A-1 was arrested and a search of his person revealed the possession of 1.83 grams of LSD totally in 91 bolts by A-1. A mahazar was prepared on the spot and on appearance of the petitioner/A-1 before the Intelligence Officer on 15.3.20 for recording of statement u/s 67 of the NDPS Act, the petitioner was arrested and produced before the learned Judicial Magistrate, Ambattur and remanded to judicial custody. On completion of investigation, the respondent filed charge sheet before the Special Court in C.C. No.105 of 2020.

3. Earlier, the petitioner/A-1 filed bail application twice before the trial court, which was dismissed and the third bail application was allowed by the trial court, on the ground of medical ailment of the petitioner, inspite of filing of objection by the respondent pointing out that the quantity of narcotics seized from the petitioner, being commercial quantity, Section 37 of the NDPS Act bars enlargement on bail. However, the trial court, considering the medical ailment

of the petitioner and further taking into consideration the present pandemic situation and the directions given by the Hon'ble Supreme Court in this regard, the petitioner was directed to be enlarged on interim bail and that the accused was directed to surrender before the NDPS Court on the date of reopening of the courts after relaxation of lockdown.

4. Assailing the said order, Crl. O.P. No.7488 of 2020 was filed to cancel the interim bail, which has since been dismissed by this, vide order dated 3.6.20. The lockdown restrictions have since been relaxed necessitating the petitioner to surrender before the NDPS Court and seek for regular bail, the petitioner filed Crl. M.P. No.1902/20, which has since been dismissed. Aggrieved by the said order of dismissal, the present petition has been filed seeking bail at the hands of this Court.

5. Learned counsel appearing for the petitioner submitted that interim bail was granted to the petitioner on the ground that the petitioner was suffering from respiratory infection and lung infection, which stands substantiated by the medical prescriptions given by the prison hospital and, therefore, relegating the petitioner back to prison at the time when the viral infection due to COVID-19 is

on the increase is in stark violation of right to life guaranteed under the Constitution. Learned counsel further submits that there has been no infraction by the petitioner with regard to any of the condition while on interim bail and, therefore, considering the medical condition of the petitioner and the present day scenario, this Court may grant bail to the petitioner taking a sympathetic view.

6. Per contra, learned Special Government Pleader appearing for the respondent submitted that the interim bail was granted only for the purpose of enabling the petitioner to get himself treated properly and the petitioner having received the necessary treatment and has recouped from the said medical ailment, cannot appeal to the mercy of this Court for continuing the bail granted to him citing that the pandemic situation would have a detrimental effect on the petitioner. It is the further submission of the learned Special Public Prosecutor that if the stand of the petitioner with regard to the pandemic is to be an yardstick to grant the relief to the petitioner, then all the inmates of the prison have to be enlarged on bail. It is the submission of the learned Special Public Prosecutor that the direction of the Hon'ble Supreme Court with regard to grant of bail is only to the limited extent of not multiplying the number of prisoners,

who are remanded for minor offences, in view of the present pandemic situation and that cannot be taken as a blanket direction to enlarge all the persons, who have been implicated in major offences, affecting the health and well being of the human race. It is the further submission of the learned counsel for the petitioner that the bail petition filed by A-2 with regard to the very same crime number, has been rejected by this Court vide order dated 7.4.21 in CrI. O.P. No.2747/21. It is the further submission of the learned Special Public Prosecutor that even otherwise, Section 37 of the NDPS Act comes into play and the petitioner cannot be granted bail for the reason that the quantity of contraband seized from the petitioner is a commercial quantity and in view of the bar u/s 37 of the NDPS Act, the petitioner cannot be granted the relief sought for. Accordingly, he prays for dismissal of the present petition.

7. This Court paid its careful consideration to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

8. It is not in dispute that the petitioner was granted with interim bail by the trial court vide order 7.5.20 in Covid Bail Petition No.68/20. While granting

the said interim bail, the material that weighed in the mind of the trial court for granting the said interim bail was due to the medical condition of the petitioner. The said reason is reflected in the order passed by the trial court. Further, the trial court has also made it clear that the interim bail is granted only as an interim measure and as and when the courts open regularly after lifting of lockdown, the petitioner shall surrender before the concerned court and file necessary regular bail application.

9. Though the respondent challenged the said order of interim bail before this Court, on the grounds, which they have taken in the present petition as well in Crl. O.P. No.7488/20, this Court dismissed the said petition, vide order dated 3.6.20, concurring with the view expressed by the trial court. Therefore, it is evident from the above that the medical condition of the petitioner, as it stood then, was the main reason for grant of interim bail, which has been accepted by this Court.

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10. The bail petition filed by the petitioner, after lifting of lockdown, has been negated by the Special Court, pursuant to which the present petition is preferred.

11. It is not the case of the petitioner that he is suffering from the said medical condition as on date. In fact, there is no iota of material filed on behalf of the petitioner to show that the present medical condition of the petitioner is the same and that his continued incarceration in prison will have a detrimental effect on his health. However, the only ground raised for considering the request for continuation of bail to the petitioner is the fact that the petitioner has been scrupulously obeying the conditions, which were imposed while interim bail was granted and, therefore, the said good conduct of the petitioner may be taken into consideration for grant of bail. It is also further urged by the petitioner that the Hon'ble Supreme Court, in view of the raging pandemic has passed directions for decongesting the prison and, therefore, the petitioner, having not committed any major offence, may be enlarged on bail.

12. It is to be pointed out that the conduct of the petitioner while on interim bail cannot be put in favour of the petitioner to seek the relief of continued bail. It is to be pointed out that the petitioner was bound to obey the conditions imposed on him for grant of interim bail, lest the interim bail would

have stood cancelled. Therefore, the submission that the petitioner was obeying the conditions imposed for grant of interim bail is wholly misconceived.

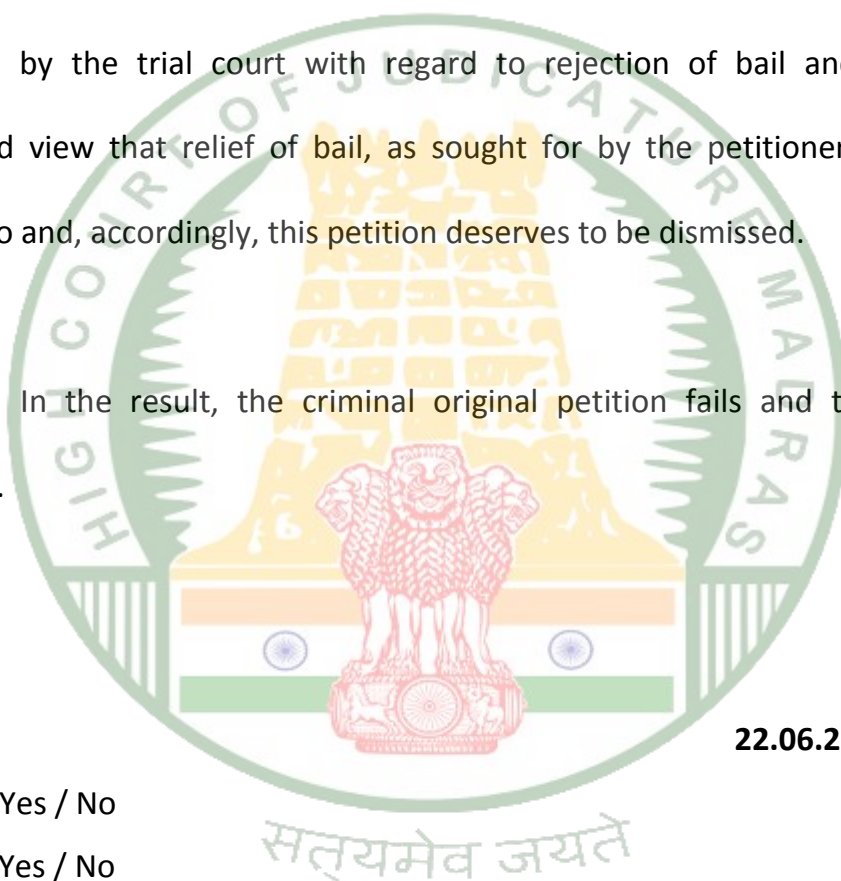
13. Further, it is to be pointed out that though the petitioner has raised other contentions relating to the contradictions in the statements and also the arrest and detention of the petitioner and on those grounds also seeks the indulgence of this Court for bail, however, it is pointed out by learned Special Public Prosecutor that the quantity of contraband seized from the petitioner is a commercial quantity and, therefore, Section 37 of the NDPS Act squarely gets attracted, which prohibits grant of bail.

14. It is not disputed by the petitioner that there is a total bar u/s 37 of the NDPS Act with regard to grant of bail involving commercial quantity of contraband. A perusal of the materials available on record reveals that the quantity of contraband seized from the petitioner is a commercial quantity and, therefore, the bar u/s 37 of the NDPS Act prohibiting grant of bail squarely gets attracted. Further, it is also to be pointed out that the bail petition with regard to the co-accused, viz., A-2, has already been dismissed by this Court on the ground of the contraband being of commercial quantity. In such view of the matter, this

Court is of the considered view that the prayer for grant of bail cannot be acceded to.

15. For the reasons aforesaid, this Court is in concurrence with the view expressed by the trial court with regard to rejection of bail and is of the considered view that relief of bail, as sought for by the petitioner cannot be acceded to and, accordingly, this petition deserves to be dismissed.

16. In the result, the criminal original petition fails and the same is dismissed.



22.06.2021

Index : Yes / No

Internet : Yes / No

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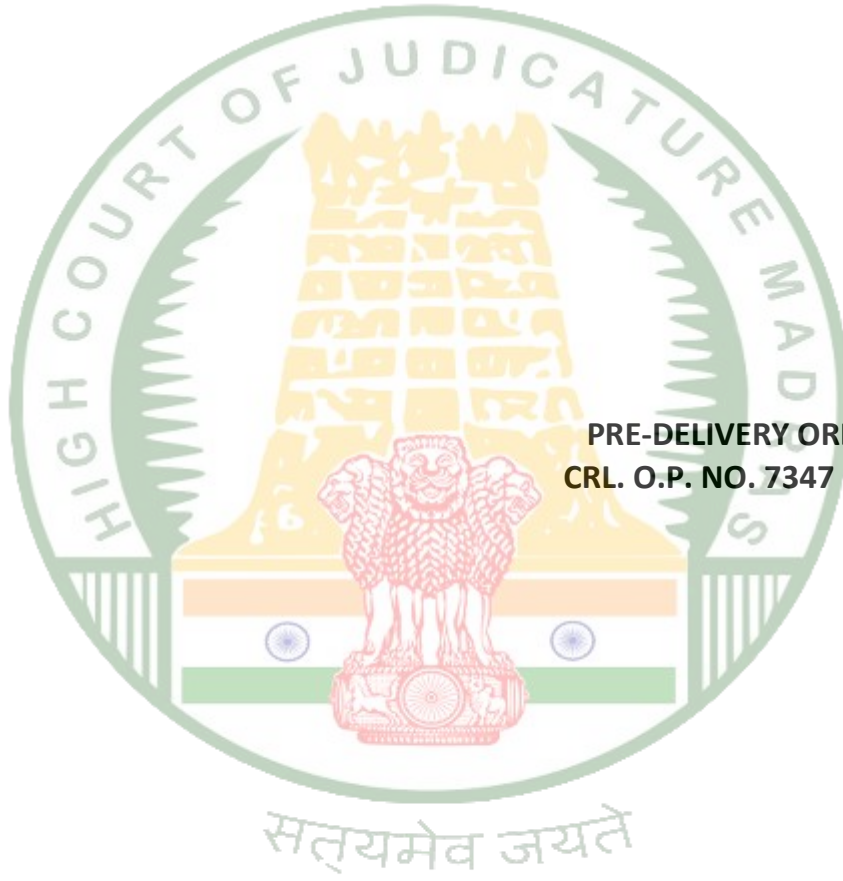
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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
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