



Crl.O.P.Nos.2553, 3462, 3645 & 4393 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Reserved on : 11.03.2022

Pronounced on : 16.03.2022

Coram::

**THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN**

Crl.O.P.Nos.2553, 3462, 3645 & 4393 of 2022

Crl.O.P.No.2553 of 2022

Kishansaran,  
S/o.Karthikeyan,

... Petitioner/Accused No.7

**/versus/**

State represented by,  
The Inspector of Police,  
T-3, Korattur Police Station,  
Chennai. (Crime No.1166 of 2021)

... Respondent/Complainant

**Prayer:** This Criminal Original Petition is filed under Section 439 of Cr.P.C.,  
pleaded to release the petitioner on bail pending investigation in the above Crime  
No.1166/2021 on the file of the respondent.

For Petitioner : Mr.G.Ashok Kumar

For Respondent : Mrs.G.V.Kasthuri,  
Additional Public Prosecutor



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Crl.O.P.No.3462 of 2022

Dhanush,  
S/o.Elangovan,

... Petitioner/Accused No.2

**/versus/**

State Rep. by  
The Inspector of Police,  
T3-Korattur Police Station,  
Ambattur, Chennai.  
Crime No.1166 of 2021

... Respondent/Complainant

**Prayer:** This Criminal Original Petition is filed under Section 439 of Cr.P.C.,  
pleaded to enlarge the petitioner on bail, in Crime No.1166 of 2021 on the file of  
the respondent.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mrs.G.V.Kasthuri,  
Additional Public Prosecutor

Crl.O.P.No.3645 of 2022

S.Karthik,  
S/o.Sekar.

... Petitioner/Accused No.3

**/versus/**

State Rep. by  
The Inspector of Police,  
T3-Korattur Police Station,  
Chennai – 600 080.

... Respondent/Complainant



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**Prayer:** This Criminal Original Petition is filed under Section 439 of Cr.P.C.,  
pleaded to enlarge the petitioner on bail, in Crime No.1166 of 2021 on the file of  
the respondent.

For Petitioner : Mr.M.Selvadurai

For Respondent : Mrs.G.V.Kasthuri,  
Additional Public Prosecutor

Crl.O.P.No.4393 of 2022

Rohith Anbu Mohammed,  
S/o.J.Anbu Mohammed

... Petitioner/Accused No.5

**/versus/**

State Rep. by  
The Inspector of Police,  
T3-Korattur Police Station,  
Chennai.  
(Crime No.1166 of 2021)

... Respondent/Complainant

**Prayer:** This Criminal Original Petition is filed under Section 439 of Cr.P.C.,  
pleaded to enlarge the petitioner on bail, in Crime No.1166 of 2021 on the file of  
the respondent.

For Petitioner : Mr.J.P.Rajesh

For Respondent : Mrs.G.V.Kasthuri,  
Additional Public Prosecutor



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### **COMMON ORDER**

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The petitioners, who were arrested for the offences punishable under Sections 8(c) r/w 22(c), 29(1) of Narcotic Drugs & Psychotropic Substances Act, 1985, in Crime No.1166 of 2021, on the file of the respondent police, seek bail.

#### **2. The case of the prosecution:-**

On 11/12/2021, the Sub-Inspector of Police attached to T3-Korattur Police Station received information from his informant that, two youngsters aged about 25 years likely to come the Pump house near Korattur Railway subway between 14.30 to 15.00 hrs to sell LSD Stamp. One of them, with French beard wearing Red colour with white stripes T-Shirt and light colour designed short. The other one, with unshaved face wearing Dove-grey colour with white colour flower, full sleeves shirt and light green colour pant. If the police team come at the said time, they can apprehend them.

**3.** On receipt of the above information, the Sub-Inspector of Police reduced the information into writing and informed his immediate superior Officer viz., the Inspector of Police. He, in turn, informed it to the Inspector, Prohibition



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and Enforcement Wing, Anna Nagar. On receipt of the authorisation to proceed, the team headed by Thiru.Gopinath, Sub-Inspector of Police with Head Constables along with necessary test kits went to the spot and kept surveillance from 14.15 hrs. At about 14.35 hrs, on identification of the suspects by the informant, the raiding team nabbed the suspects and after disclosing their identity, started interrogation. Initially, they gave contradictory statements, later disclosed their name as Daniel Jacob S/o.Peter Aruldoss, aged about 22 years resident of No.27/31, Venkataraman Nagar, Korattur, Chennai and the other one as Danush S/o.Elangovan, aged about 22 years, residing at No 3/124, KVS Flats, 4<sup>th</sup> Street, Satyanagar, Manapakkam. No person nearby were ready to stand as witnesses for search. So, in the presence of the Head Constables, the suspects were informed about the option under NDPS Act for being searched before the nearest Judicial Magistrate or a Gazetted Officer. They both declined to exercise the option and consented to be searched by the Sub-Inspector in the raiding team. The option given to the suspects and their consent were reduced into writing. When they were about to search, Daniel Jacob, voluntarily took out 23 numbers of LSD Stamps and a REDMI A-2 Cellphone from his shirt pocket and handed over it to the Sub-Inspector. Danush, voluntarily took out 27 numbers of LSD STAMPS and a



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OPPO F17 Cell Phone from his pant pocket and handed over to the Sub-Inspector.

The contrabands and cell phones were recovered under mahazar. They were kept in a brown colour cover and sealed. They both were arrested at 15.45 hrs. Arrest memo prepared and full report of seizure and arrest prepared. The statements of Daniel Jacob and Danush were recorded. The arrested accused along with the contraband recovered from them were handed over to the Station House Officer along with the report.

4. Based on the report of Gopinath, Sub-Inspector of Police, First Information Report was registered at 18.30 hrs in Crime No.1166/2021 and the arrested accused were produced before the Judicial Magistrate, Ambattur and sent to judicial remand. Later, from the information given by the arrested accused that on 08/12/2021 they supplied 10 numbers of LSD STAMPS each to one Karthick and his friend Rajesh, trap was laid on 12/12/2021. Karthick (A-3) was arrested, 10 numbers of LSD STAMPS and one Redmi Cell phone were recovered from his possession. Rakesh (A-4) was arrested, 10 numbers of LSD STAMPS and a VIVO Cell phone were recovered from his possession.



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5. The information collected indicated Rohit Anbu Mohammed (A-5)

as the main supplier of LSD. The trap laid to Rohit (A-5) and he was arrested with possession of 70 LSD STAMPS and One Plus Cell phone at about 21.15 hrs and on his information, a postal parcel addressed to him containing 305 LSD STAMPS were seized on 13/12/2021 at 16.30 hrs from the St.Thomas Head Sorting Hub Parcel Office of Indian Postal Department.

6. Based on the information given by A-5, on 14/12/2021 at about 07.05 hrs Harikrishnan (A-6) was arrested. 10 numbers of LSD STAMPS and a VIVO cell phone were recovered from his possession. Kishan Saran (A-7) was arrested at about 11.15 a.m on 14/12/2021. 10 numbers of LSD STAMPS and a One Plus Cellphone, Ganja Oil 300 mg were recovered from his possession.

7. The petitioners before this Court are Danush (A-2), Karthik (A-3), Rohith Anbu Mohammed (A-5) and Krishna Saran (A-7). They all claim that they are innocent and hail from respectable family. Their contention is that the respondent police has wrongly implicated them in this crime without proper investigation and in violation of mandatory provisions of the NDPS Act.



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8. Mr.R.C.Paul Kanagaraj, Learned Counsel appearing on behalf of

the petitioners/accused, submitted that, the NDPS Act provides for graded punishment depending upon the quantity of the contraband. In this case, the respondent had failed to mention the actual weight of prohibited drug alleged to have seized from each of the accused. The paper on which the LSD blotted, is a neutral substance. Only, on analysis in the lab the actual weight of the LSD seized will be known. In this case, the seized contraband were not produced to the Court immediately. Till date, no measures taken by the respondent to sent the samples for analysis. The petitioners are in prison for more than 60 days, therefore they are entitled for statutory bail. Unless, the prosecution place material before the Court that the contraband seized from the respective accused is of commercial quantity, the petitioners cannot be detained beyond 60 days.

9. Further, the Learned Counsel for the petitioners/accused submitted that, there is grave violation of Section 50 of the NDPS Act which is mandatory. The option was given jointly to A-1 and A-2, A-3 and A-4, A-6 and A-7. Joint communication of the right under Section 50 has been deprecated by the Hon'ble Supreme Court in *State of Rajasthan -vs- Parmanand and another* reported in



(2014(5) SCC 345).

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**10.** The Learned Counsel appearing for the petitioners also submitted that, there is grave violation of section 42(2) and Section 50 (3) of the NDPS Act. The information alleged to have received by the Sub-Inspector is not the actual information received. Body search in respect of A-1 to A-3 was done by the Sub-Inspector of Police, who is not a Gazetted Officer. The alleged voluntary statements were obtained by force and coercion.

**11.** In response to the above submission, the Learned Additional Public Prosecutor for the respondent submitted that, the investigation so far indicates that these petitioners and other accused in this case have spread their net of illegal drug peddling very wide. These petitioners and other accused are consumers turned traders of Narcotic Drugs and Psychotropic Substances. The investigation so far reveals that the fifth accused Rohit Anbu Mohammed used to procure LSD STAMPS and MDMA through online. The contraband used to be delivered to him through post. He, with the help of Danush and Daniel used to distribute LSD stamps to other peddlers around the City. From the confession



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statements of the accused persons, their source of supply and the details of other peddlers been collected and the investigation team are nearing them.

**12.** The learned Additional Public Prosecutor appearing for the respondent produced the Case Diary [CD] file and submitted that, the details of investigation will disclose the ramification of the crime and the unsuitability of releasing the petitioners on bail. Further, Public Prosecutor submitted that, so far, totally 460 LSD Stamps seized in this case and the investigation may lead to further recovery. Without any doubt the quantity involved in this case is commercial quantity and there is no delay on the part of the investigation in sending the seized material to the Court and the samples to the lab for test. The request to sent the samples for lab test is pending with the Special Judge. Therefore, Learned Additional Public Prosecutor pleads that, if the petitioners are released on bail, they will not be available for trial and there is every possibility of indulging in similar offences. The investigation conducted so far reveals that, the accused persons have already established a network for the illegal trade and broad customer base for LSD. They are capable of enticing and alluring innocent persons to this habit and make them addict to LSD and turn them as peddlers, so



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that they will have perpetual customer base.

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**13.** This Court examined the Case Diary [CD] file. It reveals that the procurement of LSD in bulk is made through online and got transported through Indian Postal Department. The investigation is on collecting the details about the website and the App through which the illegal trading done by A-5 and other accused. The material available in the CD file indicates, the case which started with arrest of A-1 and A-2 for possessing totally 50 LSD Stamps is only the tip of the iceberg and the investigation has reached to identify the persons behind the website 'xxxx' which has provided platform for the 5<sup>th</sup> accused to procure the contraband through Online.

**14.** Considering the disclosures made by these petitioners and other accused, the evidence gathered during investigation held so far clearly impress this Court that the release of the petitioners on bail at this stage will be against the interest of investigation.



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**15.** Fearing disclosure of certain information available in the CD file may cause hindrance to the investigation for tracing the Trail of the LSD, this Court restrain itself from disclosing those information. It is sufficient to record that those information provides sufficient reasons to this Court for arriving at the conclusion that the petitioners cannot be released on bail pending investigation.

**16.** The Learned Counsel for the petitioners would rely upon the following judgements:-

(i). *State of Rajasthan -vs- Parmanand and another* reported in **(2014) 5 SCC 345**.

(ii). *Arif Khan @ Agha Khan -vs- The State of Uttarakhand* reported in **(2018) 18 SCC 380**.

(iii). *Valsala -vs- State of Kerala* reported in **1993 SCC (Cri) 1082**.

**17.** In *State of Rajasthan -vs- Parmanand and another* reported in **(2014) 5 SCC 245**, this Court held as below:-

*“16. It is now necessary to examine whether in this case, Section 50 of the NDPS Act is breached or not. The*



*police witnesses have stated that the respondents were informed that they have a right to be searched before the nearest gazetted officer or the nearest Magistrate or before PW 5 J.S. Negi, the Superintendent. They were given a written notice. As stated by the Constitution Bench in Baldev Singh [State of Punjab v. Baldev Singh, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080], it is not necessary to inform the accused person, in writing, of his right under Section 50(1) of the NDPS Act. His right can be orally communicated to him. But, in this case, there was no individual communication of right. A common notice was given on which only Respondent 2 Surajmal is stated to have signed for himself and for Respondent 1 Parmanand. Respondent 1 Parmanand did not sign.*

*17. In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be*



*made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before the nearest gazetted officer or before the nearest Magistrate. Similar view taken by the Punjab and Haryana High Court in Paramjit Singh [Paramjit Singh v. State of Punjab, (1997) 1 Crimes 242 (P&H)] and the Bombay High Court in Dharmaveer Lekhram Sharma [Dharmaveer Lekhram Sharma v. State of Maharashtra, (2001) 1 Crimes 586 (Bom)] meets with our approval.”*

**18.** The judgments cited by the petitioners to emphasis that there is violation of mandatory provisions of the Act are mostly rendered after Trial and not at the stage of investigation. Unlike the present case where both the accused have given consent and signed, in the joint communication, in ***Parmanand case***, only the co-accused given his consent and signed, Parmanand-the appellant not signed to prove his consent. In any case, they are not appropriate to consider at this



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juncture, when so far 460 LSD Stamps seized and persons who are part of the conspiracy and named in the confession statements are yet to be secured.

19. Citing the decision of the Constitutional Bench of the Hon'ble Supreme Court in *Vijaysinh Chandubha Jadeja -vs- State of Gujarat* reported in (2011) 1 SCC 609 clarifying the earlier constitutional Bench decision in *State of Punjab -vs- Baldev Singh* reported in (1999) 6 SCC 172, it is argued by the petitioners' Counsel that when there is violation of Section 50 of the NDPS Act, it is fatal to the case of the prosecution. According to the Learned Counsels, the recovery gets vitiated since the mandatory provision of Section 50 of NDPS Act is violated.

20. LSD stands for Lysergic acid Diethylamide, also known as LYSERGIDE. It is available in both solid and liquid forms. Its chemical name is N, N-diethyliyersergmide (Lysergic acid Diethylamide).

21. As per section 2(xxiii) of the NDPS Act, 'Psychotropic Substances' means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of



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psychotropic substances specified in the schedule. LSD which falls within the meaning of Psychotropic Substances is included as entry 4 in the list of Psychotropic substances under Schedule to the NDPS Act. The notification of the Central Government dated 16<sup>th</sup> July, 1996 has provided a TABLE specifying small and commercial quantity. In which in entry 133, less than 0.002 gm is the small quantity and above 0.1 gm is commercial quantity. In case, the stamps contain any other prohibited substance found on chemical analysis, then entry 239 will apply, which says any mixture or preparation with or without a natural material of any of the drugs referred TABLE, then lesser the small quantity/commercial quantity between quantities given against the respective narcotic drugs or psychotropic substances mentioned has to taken as small/commercial quantity.

**22.** The LSD stamps are chewable blotter papers in which LSD in liquid form is put in drops and mostly consumed along with the blotter. Thus, LSD Stamps are substance/material which contains psychotropic substances. The reading of section 2(xxiii) and the entry 4 of the schedule to the Act without any doubt indicates that to determine the quantity of the contraband seized it is the total weight of the LSD stamps to be taken and not the actual content of LSD



alone. The chemical lab test will provide us whether the stamps seized actually contain LSD as suspected or also contain any other psychotropic substances or prohibited substances and if so, what is the percentage. The chemical test will show us the purity of the substance/material seized. No doubt, the act provides for graded punishment depending upon the quantity, but as far as any mixture or preparation of narcotic drugs or psychotropic substances concern, the weight of the substances including the neutral material has to be taken into account since the end user consumes the prohibited substance with the neutral material which is used to hold the liquid substance .

**23.** Therefore, the contention of the Learned Counsels for the petitioners that the contraband seized to be presumed to be of less than commercial quantity is not sustainable, though some of the High Courts in other parts of this Country has held otherwise. With great respect and humility I differ, since their view was due to non consideration of Section 2(xxiii) of the Act which defines 'Psychotropic Substances' means and includes the mixture or natural material added to the psychotropic substances and the notification issued by the Central Government after the cascading effect on controlling the trafficking of Narcotic



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drugs after the judgment of *E.Michael Raj -vs- Intelligence Officer, Narcotic*

*Control Bureau* reported in (2008) 5 SCC 161.

24. In this case, the petitioners are members of conspiracy facing investigation for recovery of 460 LSD Stamps and major part of the seizure at Sorting Office of Postal Department based on the confession of A5, [i.e., 305 LSD Stamps] kept in the parcel addressed to A5/Petitioner in Crl.O.P.No.4393 of 2022.

25. In the result, these Criminal Original Petitions are dismissed.

16.03.2022

Index :Yes.

Internet :Yes.

Speaking order/Non Speaking order

To:-

1. The Judicial Magistrate, Ambattur.
2. The Inspector of Police,T-3, Korattur Police Station, Chennai.
3. The Section Officer, V.R.Section, High Court, Madras.



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**Dr.G.JAYACHANDRAN,J.**

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Pre-delivery common order made in  
Crl.O.P.Nos.2553, 3462, 3645 & 4393 of 2022

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