



CrI.O.P.No.2794 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 23.03.2022

Pronounced on : 29.03.2022

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.2794 of 2022

Raju Ram Vishnoi,
S/o.Jagamalram,
No.11/06, Varadhan Street,
Sevenwells, Chennai – 600 001.

and

Vishnoiyan Ki Dhani,
Doongarwa,
Bargoda Tk,
Jalor District, Rajasthan.

... Petitioner/Accused

/versus/

State Rep.by,
The Inspector of Police,
NIB CID Police Station, Chennai.

... Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail in C.C.No.128 of 2019 (FIR No.121/2019)
on the file of this Hon'ble Court, in Crime No.65 of 2019 on the file of the
Inspector of Police NIB CID Police Station, Chennai.



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For Petitioner : Mr.T.S.Saikumar,

For Respondent : Mr.G.V.Kasthurai,
Additional Public Prosecutor (Crl.Side)

ORDER

This petition for bail is filed by the sole accused in the case related to seizure of 500 grams of heroin on 25.05.2019 at about 10.15 hrs, near Saravana Stores, Purasaivakkam. The respondent police, on completion of investigation has filed final report against the petitioner for offence under Section 8(c) and 21(c) of Narcotic Drugs and Psychotropic Substance Act, 1985.

2. Contending that, the petitioner is in prison for nearly 2 years and 10 months in prison, in a case where the respondent police failed to comply the mandatory provisions regarding search and seizure. The Learned Counsel for the petitioner submitted that, the petitioner cannot be convicted for the alleged possession of heroin of commercial quantity, since the search of the person was not conducted in the presence of Gazetted Officer or any Judicial Magistrate as mandated under section 50 of the NDPS Act. The contraband alleged to have been recovered from the possession of the petitioner/accused on 25.05.2019, was not



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produced before the Court along with the accused at the time of remand. It was

produced before the Special Court for NDPS Act at Chennai only on 10/06/2019.

The samples from the seized material was not drawn as per the notification of the Government. As per Notification No.1/89, not less than 5 grams of the drug ought to have been drawn as sample for test. Whereas, in this case admittedly only 2 grams was drawn and sent to test. The said violation is a mandatory violation.

3. Per contra, the Learned Additional Public Prosecutor for the state/respondent submitted that, the accused was explained about his right to be searched before a Gazetted Officer or a Judicial Magistrate in writing. The accused declined to exercise the option and submitted himself to be examined by the Sub-Inspector of Police and only after getting his consent, he was subjected to personal search.

4. Regarding the allegation about delay in producing the seized contraband before the Court, the Learned Additional Public Prosecutor produced the Form-91 wherein, the Judicial Magistrate has initialled on it with date as 25/05/2019 and contended that, the property was produced along with Form-91



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before the Judicial Magistrate before whom the accused was produced for first remand. Thereafter, the property was produced before the Special Court as per the instruction of the Judicial Magistrate.

5. Regarding the alleged violation of the Notification No.1/89, the Learned Additional Public Prosecutor submitted that, no doubt only less than 5 grams was drawn as sample, but that was sufficient for the Laboratory to test and they have given report that the sample contains diacetylmorphine (traded in the name of heroin) and returned 1.017 grams of unexpended remnant samples. Therefore, drawing of lesser quantity of the sample noway prejudice the petitioner. Further, the Learned Additional Public Prosecutor also brought to the notice of this Court that, this petitioner hails from Rajasthan and he is facing a similar case at Baghana Police Station in Crime No.106/2018 under section 8, 15 and 19 of NDPS Act. He was transferred to Sub-Jail, Neemuch in connection with that case under Prisoner Transit warrant. Due to this, the trial in this case was disturbed in spite of framing charges in C.C.No.128 of 2019. Later, the petitioner was brought back to Central Prison, Puzhal, Chennai. Only thereafter, the trial has commenced and posted for examination of further PW's. Therefore, submitted that, if the



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petitioner is released on bail at this juncture, there is every possibility of jumping bail in a case of possession of commercial quantity of psychotropic substances.

6. Considering the rival submissions, this Court is of the view that the petitioner who is facing trial for offences under section 8 (c) r/w 21 (c) of NDPS Act, apart from the embargo under section 37 of the NDPS Act, also suffers prosecution in a similar case at Rajasthan. The petitioner being a native of Rajasthan and no roots in this State, if released on bail when the trial is in progress, there is possibility of abscondance and derailment of the progress of the trial.

7. Therefore, without prejudice to the right of the petitioner to canvass the grounds of mandatory violations before the Trial Court on completion of examination of witnesses and further, the prosecution is directed to marshal the witness on day to day basis and complete the trial as early as possible. Hence, this Criminal Original Petition is dismissed.

29.03.2022

Index : Yes/No.



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Internet :Yes/No.

Speaking order/Non Speaking order

bsm

To:-

1. The Principal Special Judge, NDPS Court, Chennai.
2. The Central Prison, Puzhal, Chennai.
3. The Inspector of Police, NIB CID Police Station, Chennai.
4. The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery order made in
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