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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :21.04.2022

Pronounced on :26.04.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.6456 of 2022

Shri.Syed Shirajuddin Badsha

.. Petitioner/Accused

/versus/

State/Central

Rep by:

The Superintendent of Customs,
RSI-AIR New Customs House,
Meenambakkam, Chennai-27.

.. Respondent/Complainant

Criminal Original Petition has been filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail in C.C.No.168 of 2021 pending trial before the Special Judge, I Additional Special Court for exclusive Trial of Cases under NDPS Act, Chennai.

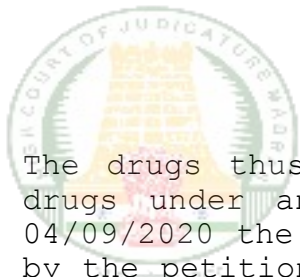
For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor for
NCB Cases

ORDER

The petitioner, who was arrested and remanded into judicial custody on 11.09.2020 for the alleged offences punishable under Sections 22(C), 23, 28, 29 of NDPS Act in R.R.No.47 of 2020 on the file of the respondent police, seeks bail.

2.The case of the petitioner herein is that he is running a wholesale Pharmacy in the style of M/s Skies Health Care at Chennai with valid drug license required for the business. He used to send drugs to his customers living abroad through Indian Postal Department and they are genuine buyers of the drugs required for their ailments.



The drugs thus sold fall under Schedule H drugs and not prohibited drugs under any of the provisions of law in force. While so, on 04/09/2020 the Customs Officials on suspicion scanned 23 parcels sent by the petitioner to his customers Abroad and found that they contain medicines and no 'NOC' accompanies with it. Hence, they were returned to the Postal Department with instruction to detain the parcels for the sender (petitioner herein) to produce the 'NOC' from Drug Control Department (in short "CDSCO"). For the same reasons, on 07/09/2020 , 10/09/2020 and 14/09/2020 the Customs Department detained 211 parcels, 14 parcels and 5 parcels respectively sent by the petitioner.

3.The Officers of Customs Department on 04/09/2020, examined the 23 parcels bearing numbers 212 to 234 and they found Clonazepam - 1 MG (10 strips x 10 tablets) Totally 100 tablets weighing 11 grams in parcel number 230.

4.On 07/09/2020 the examination of 211 parcels (Mails Number A-1 to 99, A-100 to 199 and A 200 to 211) they found :-

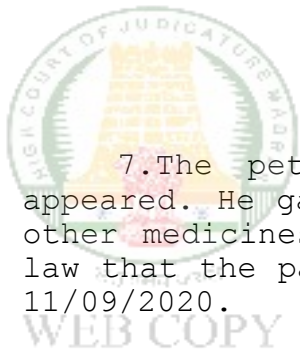
(a)Zolpidem Tartarate 10 - 600 tablets.(10 strips x 15 tablets x 4 parcels) in parcels bearing Postal Mail No.A0132, A0133, A0139 and A0145 . The total weight 126 grams.

(b)Clonazepam 1 MG - 400 tablets (10 strips x 10 tablets x 4 parcels) in parcels bearing Postal Mail No.A0137, A0141, A0143 and A0144. The total weight 44 grams.

(c)Methyl Phenidate Hydrochloride 10 MG - 1800 tablets (18 strips x 10 tablets x 10 parcels) in parcels No.A0147 to A0156. The total weight 288 grams.

5.On 10/09/2020, 14 unregistered parcels sent by the petitioner to foreign countries were detained and scanned. They were found to be medicines but not accompanied with NOC. Hence, on suspicion, the parcels were examined and found to contain Methyl Phenidate Hydrochloride 10 MG - 180 tablets (18 strips x10 tablets). In parcel, No.239 and Methyl Phenidate Hydrochloride 10 MG - 180 tablets (18 strips x10 tablets) in parcel No.A248. Totally, 360 tablets weighing 57.60 grams. These tablets were sent by the petitioner to his customer by name Craig Lawry at 1523, Pinebay Drive, Sarasota, FL, 34231, USA.

6.On 14/09/2020, 5 unregistered parcels sent by the petitioner to his foreign buyers were detained and scanned. On reasonable suspicion, they were examined and found to contain Methyl Phenidate Hydrochloride 10 MG - 180 tablets (18 strips x10 tablets) total weight 28.80 grams. These tablets were sent by the petitioner to his customer by name Craig Lawry, 1523, Pinebay Drive, Sarasota, FL, 34231, USA.

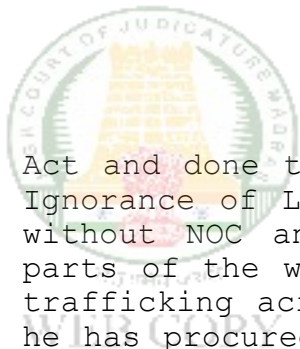


7.The petitioner was summoned to the Customs Office and he appeared. He gave statement that he mailed those medicines along with other medicines to his customers Abroad and he was not aware of the law that the parcel should accompany NOC. However, he was arrested on 11/09/2020.

8.The Learned Counsel for the petitioner states that without knowledge that these medicines covered under NDPS Act and should accompany NOC with good intention to help his customers Abroad, he had sold the medicines and sent through post. The medicines before delivery to the persons concern had been detained and no crime attracting offences under Sections 8 (c) r/w 22 (c), 23, 28 and 29 had been committed. As an authorised dealer, the petitioner is entitled to procure these medicines and sell it. The medicines seized did not cross the Territory of India and therefore, Section 28 of the NDPS Act ,which is penal provision for illegal export or import of Psychotropic Substances will not attract. Likewise, Section 29 of the NDPS Act, which deals with conspiracy to commit offence under NDPS Act, will also not attract, since he is the sole person involved in the transporting the medicine to foreign buyers. Since the goods were detained, at the most the petitioner can be prosecuted only for the attempt to export a psychotropic substances under Section 30 of the NDPS Act and not for other Sections. Therefore, the rigor of Section 37 of the NDPS Act will not apply. Since no prima facie case made out as alleged by the prosecution to presume the culpable mental state, the petitioner is not guilty of offences charged. The petitioner has sent the above drugs along with other medicines with good intention and without knowledge that they are covered under NDPS Act and it should accompany NOC issued by CDSCO. He undertakes that he will not commit the said act while in bail. He is in prison since 11/09/2020 and to establish his innocence, he may be set at liberty by granting bail.

9.The learned Special Public Prosecutor appearing for the Respondent Department submitted that, the petitioner is a registered dealer in pharma products. Schedule H drugs are supposed to be sold only on prescription and the drugs, which are notified under NDPS Act, cannot be exported without NOC from CDSCO. The petitioner herein had been exporting drugs covered under NDPS Act, which requires NOC, to various countries to various persons without prescription. The total weight of the Methyl Phenidate Hydrochloride 10 MG exceeds the weight prescribed for commercial quantity. Therefore, Section 37 of the NDPS Act squarely applies to the petitioner. Further, once the parcel containing prohibited drug is handed over by the sender to the Postal Department, the commission of crime to export prohibited drug containing psychotropic substances gets completed.

10.The petitioner has exported prohibited drugs to various persons residing at various countries. In his statement recorded under Section 67 of the NDPS Act, he has admitted his knowledge about the



Act and done the crime knowingly to make easy money. Even otherwise, Ignorance of Law is not an excuse and the quantity of drug exported without NOC and the nature of its receivers residing in different parts of the world indicates that the petitioner is involved in drug trafficking across the world. In his statement, he has admitted that he has procured it from a person at Dawa Market, Mumbai, without any bill and purchased it particularly to meet the demand of his foreign clients Eric Krevat and Craig Lawry.

11.The learned Special Public Prosecutor referring the Notification of the Department of Revenue regarding the small and commercial quantity of the respective psychotropic substances submitted that, at serial No.189 of the table, the commercial quantity for CLONAZEPAM is prescribed as 100 grams. At Serial No.162 of the table, the commercial quantity for Methyl Phenidate is prescribed as 50 grams. At serial No.238 of the table, the commercial quantity for ZOLPIDEM is prescribed as 250 grams. From the parcels posted by the petitioner, the respondent has seized 55 grams of Clonazepam, 126 grams of Zolpidem and 345.6 grams of Methyl Phenidate. Considering the frequency of export, weight and omission to get NOC, the bail petition has to be dismissed.

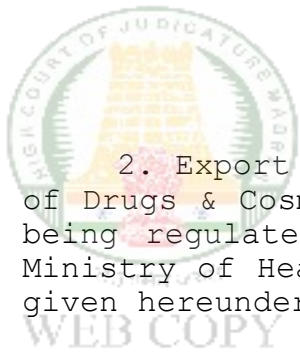
12.Heard the counsels. Records perused.

13.The complaint filed by the respondent before the Special Court for NDPS Act cases, Chennai indicates that, about 253 parcels sent by the petitioner herein to Foreign countries were scanned by the Customs Department between 04/09/2020 and 14/09/2020. On knowing that the parcels contain medicines, the Customs Officials instructed the Postal Department to get from the sender/the petitioner herein the certificate of analysis in compliance with the Notification of Directorate General of Foreign Trade dated 13/04/2009. The petitioner has not turned up to comply the requirements mentioned in the Directorate General of Foreign Trade dated 13/04/2009 which reads as below:-

" GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF FOREIGN TRADE

PUBLIC NOTICE NO. 173 (RE-2008) /2004-2009
NEW DELHI, DATED THE 13TH APRIL, 2009

In exercise of the powers conferred under Paragraph 2.4 of the Foreign Trade Policy, 2004-2009, as amended from time to time, it has been decided to notify, with immediate effect, procedures/guidelines to strengthen the enforcement mechanism available under the Drugs and Cosmetics Act, 1940, to ensure that counterfeit drugs do not get exported out of the country.



2. Export of Drugs & Pharmaceuticals covered under the provisions of Drugs & Cosmetics Act 1940 and the rules made thereunder, which is being regulated by Drugs Controller General of India (DCGI) in the Ministry of Health & Family Welfare, shall be as per the requirements given hereunder:

Every exporter of Drugs & Pharmaceuticals at the time of shipment shall submit, along with other required documents, the following:

(i) A copy of Certificate of Analysis issued by the manufacturer for the subject product;

Or

(ii) A copy of Certificate of Analysis issued by approved laboratory of the importing country / FDA;

Or

(iii) A copy of Certificate of Analysis issued by a laboratory approved by Drugs Controller under Drugs & Cosmetics Act 1940 and the rules made thereunder.

Wherever required the officials of the Drug Control Department posted at the port offices shall retain a sample of the subject consignment for the purpose of reference and tracking of the manufacturer/exporter of the subject product.

3. This issues in Public Interest.

(R.S. GUJRAL)

And DIRECTOR GENERAL OF FOREIGN TRADE

And Ex-Officio Additional Secretary to the Govt. of India

14. Apart from the above said direction given by the Directorate General of Foreign Trade, under Chapter VI of the NDPS Rules, 1985, there is a general prohibition of Export and Import of Narcotic Drugs and Psychotropic Substances. Rule 53 prescribes import and export of NDPS specified in Schedule 1 of the Rules. This prohibition is subject to Chapter VII A, which provides special provisions for transport, export, import etc., of Narcotic Drugs and Psychotropic Substances for Medical and Scientific purposes.

15. The Learned Counsel for the petitioner relying upon Chapter VII A of the NDPS Rules, submitted that the petitioner exported the drugs for medical purposes and therefore, the petitioner may be granted bail.

16. This Court is not able to countenance the said submission because Rule 53 imposes general prohibition of import or export of Narcotic Drugs and Psychotropic Substances and Rule 67 A permits export of very limited medical requirements of a foreigner, which shall be on authorization of the Hospital or any other establishment of the government especially approved by that Government.



17. Rule 53 and Rule 67 A Narcotic Drugs and Psychotropic Substances Rules, 1985 are extracted below for clear understanding of the legal position explained above.

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[Rule 53: General Prohibition:- Import into and export out of India of the narcotic drugs and psychotropic substances is prohibited except with an import certificate or export authorization issued under the provision of this Chapter.]

Provided that import into India or export out of India of the narcotic drugs and psychotropic substances specified in Schedule I of these Rules shall be for the purpose mentioned in Chapter VII-A]

Rule 67 A: Special Provisions for medical and scientific purposes:- Notwithstanding anything contained in the foregoing provisions of these Rules-

(a) a narcotic drug and psychotropic substance may be used for -

(i) scientific requirements including analytical requirements of any Government laboratory or any research institution in India or abroad;

(ii) very limited medical requirements of a foreigner by a duly authorized person of a hospital or any other establishment of the Government especially approved by that government.

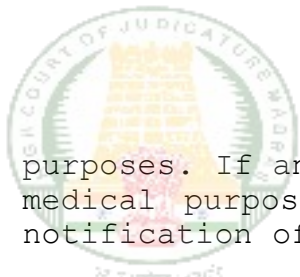
(iii) the purpose of de-addiction of drug addicts by Government or local body or by an approved charity or voluntary organization or by such other institution as may be approved by the Central Government;

(iv) the purpose of restraining or immobilizing wild animals by or under the authority of the Government and approved by that Government]

(b) persons performing medical or scientific functions [or the authority exercising the powers under sub-clause (iv) of clause (a)] shall keep records concerning the acquisition of the substance and the details of their use in Form 7 of these rules and such records are to be preserved for at least two years after their; (last use).

(c) a narcotic drug and psychotropic substance may be supplied or dispensed for use to a foreigner pursuant to medical prescription only from the authorized licensed pharmacists or other authorized retail distributors designated by authorities responsible for public health.]

18. The petitioner has exported drugs containing substances like Chlorophenyl (Clonazepam), Methyl alpha- phenyl (Methyl Phenidate) and trimethyl- tolyl (Zolpidem) which are mentioned in Schedule 1 of the Rules. These drugs can be exported only for very limited medical



purposes. If anybody intends to export these drugs, even for a limited medical purposes, such export should satisfy Rule 67A (ii) and the notification of Directorate General of Foreign Trade dated 13/04/2009.

19. In the instant case, the export done by the petitioner through the Postal Department does not satisfy the above two mandatory requirements. The drugs, which ought to have been accompanied with a certificate of analysis from its manufacturer or authorized lab and also accompanied with the prescription from the hospital of the foreign patient, were sent without these two mandatory documents.

20. Exporting medicine containing Psychotropic substances mentioned in the Schedule to the Rules, without certificate of Analysis and the medical prescription for the patient to whom the drug supplied makes out prima facie case for prosecution under NDPS Act. One of the drug seized exceeds the commercial quantity. The petitioner, who claims to be a registered wholesale Dealer, has not purchased the subject drugs from the manufacturer or from any authorized Distributor. He has purchased the drugs illegally, without any purchase bills from an unknown person at Dawa Market, Mumbai. Thus, the trade of prohibited drug procured illegally and exported to foreign countries, without necessary certificates and documents renders the petitioner plea for bail to fail. The above said observation of this Court is for the limited purpose of bail and this order shall not have any bearing while deciding the matter finally after due trial.

21. In the result, this Criminal Original Petition for bail is dismissed.

-sd/-

26/04/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL JUDGE
I ADDITIONAL SPECIAL COURT FOR EXCLUSIVE
TRIAL OF CASES UNDER NDPS ACT, CHENNAI.



2 THE SUPERINTENDENT OF CUSTOMS,
RSI-AIR NEW CUSTOMS HOUSE,
MEENAMBAKKAM, CHENNAI-27.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

4 THE SPECIAL PUBLIC PROSECUTOR
FOR NCB CASES, HIGH COURT, MADRAS.

CC to M/S.R.C.PAUL KANAGARAJ Advocate on payment of necessary
charges

CRL OP.6456/2022

Date :26/04/2022

JPA 06/05/2022