



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :25.04.2022

Pronounced on :29.04.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.Nos.8274 and 9164 of 2022

J.Somasundaram ... Petitioner/Accused No.1
in Crl.O.P.No.8274 of 2022

Kamaraj ... Petitioner/Accused No.2
in Crl.O.P.No.9164 of 2022

/versus/

State represented by
The Inspector of Police,
Adhiyamankottai Police Station,
Dharmapuri (District).
(Crime No.82/2022)

... Respondent in both cases

Prayer in Crl.O.P.No.8274 of 2022: Criminal Original Petition has been filed under Section 439 of Cr.P.C., praying to release the petitioner on bail pending investigation in Crime No.82 of 2022 on the file of the Inspector of Police, Adhiyamankottai Police Station, Dharmapuri District.

Prayer in Crl.O.P.No.9164 of 2022: Criminal Original Petition has been filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail in Crime No.82 of 2022 pending investigation on the file of the Inspector of Police, Adhiyamankottai Police Station, Dharmapuri.

For Petitioner : Mr.V.Rajamohan
(Crl.O.P.No.8274 of 2022)

For Petitioner : Mr.M.Selvam
(Crl.O.P.No.9164 of 2022)

For Respondent : Mrs.G.V.Kasthuri,
(both cases) Additional Public Prosecutor
(Crl.Side)



COMMON ORDER

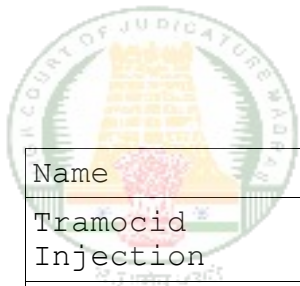
In CrI.O.P.No.8274 of 2022: The petitioner/A1, who was arrested and remanded into judicial custody on 10.03.2022 for the alleged offence punishable under Section 8(c) and 22 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

In CrI.O.P.No.9164 of 2022: The petitioner/A2, who was arrested and remanded into judicial custody on 11.03.2022 for the alleged offence punishable under Section 8(c) r/w 22 (b) of the NDPS Act, 1985.

2. The petitioner in CrI.O.P.No.8274/2022 is the owner of the Pharmacy by name J.S.Medicals situated at Kandasamy Vathiyar Street, Dharmapuri Town. Based on the secret information received by the Drug Inspector, Dharmapuri Range that scheduled drugs mentioned in Narcotic Drugs and Psychotropic Substances Act are sold illegally, he made a search of the petitioner shop on 10/03/2022 at about 7.00 pm. In search of the shop, nothing incriminating was found. On enquiry, Somasundaram/1st petitioner confessed that, he has purchased TRAMADOL HYDROCHLORIDE INJECTION from one Kamaraj (petitioner in CrI.O.P.No.9164/2022) and kept it in his house for illegal sale. Therefore, the Drug Inspector conducted search of the residence of Somasundaram and found several drugs stocked in his house without proper purchase bill. He immediately informed about the concealment of drugs without valid license to the respondent police and on the arrival of the Sub-Inspector of Police attached to the jurisdictional police to the residence of Somasundaram, search was conducted and among the drugs illegally kept in his house. The following drugs are listed in the schedule to the Narcotic Drugs and Psychotropic Substances Act, 1985 as drug containing Psychotropic substances and to be sold only for limited medical use on prescription were found:

Name	Component	Quantity	Ampules
Tramocid Injection	Tramadol Hydrochloride Injection	100mg/2ml	69
Tramanof Injection	Tramadol Hydrochloride Injection	100mg/2ml	140
Tramatac Injection	Tramadol Hydrochloride Injection	50mg/ml	50

3. On further interrogation, Somasundaram confessed that he illegally purchased the drug from one Kamaraj (petitioner in CrI.O.P.No.9164/2022). Hence, the Raiding Party went to the residence of Kamaraj along with Somasundaram. The residence of the supplier of the drug Thiru.Kamaraj was identified by Somasundaram. The search of Kamaraj house lead to recovery of the following drugs:



Name	Component	Quantity	Ampules
Tramocid Injection	Tramadol Hydrochloride Injection	100mg/2ml	50
Traman Injection	Tramadol Hydrochloride Injection	100mg/2ml	300

4. Kamaraj has confessed that, he is in illegal trade of Psychotropic substances. He purchased 1400 ampules of TRAMADOL injection from a dealer at Bangaluru and gave 250 ampules to Somasundaram and rest shared with one Murugesan and Vajiravel, who are peddlers in drug.

5. The Team proceeded to the residence of Murgesan and then to the residence of Vajiravel and recovered the following drugs:-

From Murugesan:

Component	Quantity	Ampules
Tramadol Hydrochloride Injection	100mg/ml	21
Tramadol Hydrochloride Injection	50mg/ml	500
Tramadol Hydrochloride Injection	50mg/ml	111

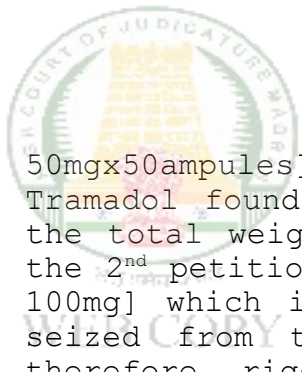
From Vajiravel:

Component	Quantity	Ampules
Tramadol Hydrochloride Injection	50mg/ml	103

6. All the four were arrested and the contraband in their possession concealed in their respective houses came to be seized under Mahazar in the presence of the witnesses.

7. The Learned Counsel appearing for the petitioner submitted that the Central Government in exercise of the power under Section 2 (viia) "Commercial Quantity" and (xxiia) "Psychotropic Substance" has identified Tramadol is a Psychotropic Substances. The said drug was included in the schedule by notification dated 26.04.2018. As per this notification, "small quantity is 5gm" and "commercial quantity is over and above 250gm".

8. As far as 1st petitioner/Somasundaram is concerned, it is alleged that, he was in possession of 69 ampules of Tramocid injection each 100mg/2ml; 140 ampules of Tramanof injection each 100mg/2ml and 50 ampules of Tramatac Injection each 50mg/1ml. The total potency of Tramadol in these drugs is [100mgx69ampules + 100mgx140ampules +



50mgx50ampules] totally 23400mg. Therefore, the actual weight of Tramadol found in the ampules seized is only 23.4grams. Similarly, the total weight of the contraband alleged to have been seized from the 2nd petitioner/Kamaraj is [50 ampules x 100mg] and [300 ampules x 100mg] which is only 35 grams. Therefore, what is alleged to have seized from these two petitioners are intermediate quantity and therefore, rigour of Section 37 of NDPS Act will not apply to these petitioners. Secondly, search of the accused premises was done after sunset and before sunrise. Under NDPS Act, 1985, in case of any search, it should be conducted between sunset and sunrise, the empowered Officer should take down in writing. The information given by the persons are recorded the reasons to believe and conducting the search without warrant between sunset and sun rise and shall within 72 hours send a copy to his immediate Official superior.

9. In the present case, the information received by the Drug Inspector and he has proceed to search the shop premises of the 1st petitioner at about 7.00 p.m., on 10.03.2022. Neither he nor his Sub-Inspector/Rajesh has recorded the reasons to believe or the information received alleged to have been forwarded it to the immediate Official superior, being an violation of mandatory pre-condition. Hence the petitioners are entitled for bail.

10. In support of his submission, the Learned Counsel for the petitioner rely upon the judgment of the Hon'ble Supreme Court in Boota Singh and Ors -vs- State of Haryana reported in MANU/SC/0283/2021.

11. Per contra, Learned Government Advocate (Crl.Side) would submit that, the search was conducted by the Drug Inspector based on the information received about the illegal sale of Psychotropic Substances drug. The search at the premises of the 1st petitioner shop did not resulted in any recovery of Psychotropic Substances. The subsequent information given by the 1st petitioner/Somasundaram, the subsequent recovery from the residence of the other accused was effected and it was a continuous chain process. The information so given by each of the accused were recorded during the search process itself and on completion of the search process, all the accused premises commences from 10.03.2022 at about 7.00 p.m to 6.15 a.m., on the next day. When 4th accused/Vajiravel was arrested after recovery of Psychotropic Substances from his house, were all recorded by way of Special report and submitted to the Inspector of Police by Rajesh, Sub-Inspector of Police, who conducted search and seizure. Based on the Special report, F.I.R was registered in Crime No.82/2022 on 11.03.2022 at about 8.45 hrs. Therefore, there is no violation of Section 42(1) and Section 42(2) of NDPS Act, 1985.

12. Regarding quantity of contraband seized, the Learned Government Advocate (Crl.Side) for the respondent would submit that from investigation and confession statement of the 2nd accused, it has



come to light that 1400 ampules of Tramadol was purchased by A2 at Bangalore, transported and distributed to other accused, out of 1400 ampules of Tramadol, 250 ampules was given to Somasundaram and rest was distributed among other two accused, Murugesan and Vajiravel. What was recovered from all the four accused was the remaining drug, after being sold to the end customers. Though contraband were recovered from four different places, they all form part of one single transaction namely transport of 1400 ampules, two months prior to the seizure. Therefore, the petitioners are entitled for bail, in view of the pre-condition imposed under Section 37 of NDPS Act.

13. The Learned Counsel for the petitioners while contending that the weight of the contraband to be calculated based on its potency. The Learned Government Advocate (Crl.Side) for the state would submit that the weight of entire mixture has to be taken into consideration, in view of the serial No.239 of the Schedule in NDPS Act, 1985, which says that, while considering the weight, any mixture or preparation that of with or without a neutral material of any of the drug mentioned in the schedule.

14. This Court, after giving anxious consideration regarding the rival submission, holds while considering the weight of the contraband seized, whether it falls within the commercial quantity or intermediate or otherwise. It is to be noted that the total quantity of Tramadol in liquid form found in the ampules is [50+280+138] totally 468ml which on conversion it is nearly 46.8 grams. Similarly, the weight of the contraband in the liquid form recovered from the 2nd accused is 2mlx50ampules=100mg and 2mlx300 ampules = 600mg, totally 700mg.

15. Prima facie the material placed before this Court indicates that the contraband recovered from all the four accused belongs to same batch. The date of manufacture indicates that they emanated from common source. This inference is strengthened by the confession statement of Kamaraj, who has confessed that he procured 1400 ampules of Tramadol injection from Bangalore and distributed it to the other accused for sale to the end user. Hence, in the said circumstances, it is to be presumed that the contraband involved in this case is above 250 grams and falls under the Commercial quantity.

16. The next point requires consideration is whether there is any violation of the mandatory provision stated in Section 42(1) & (2) of Narcotic Drugs and Psychotropic Substances Act, 1985, which reads as below:-

"42. Power of entry, search, seizure and arrest without warrant or authorisation.- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue



WEB COPY

intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:



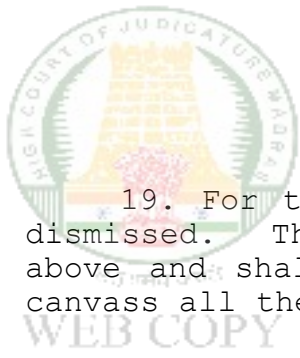
[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

17. The Learned Government Advocate (Crl.Side) for the respondent police submit that as soon as the knowledge of concealment of Psychotropic substances, on visit to the 1st accused residence by the Drug Inspector, he has informed it to the Sub-Inspector of Police, who is an empowered Officer. On his arrival to the residence of the 1st petitioner the search was conducted. The search at the residence of 1st petitioner/Somasundaram immediately followed by the search of the residence of Kamaraj and other two accused namely Murugesan and Vajiravel. It is a chain of action followed by based on one information after another. The entire process has been recorded as a Special Report and based on the special report, F.I.R has been registered within 72 hours of the search and seizure.

18. This Court finds the submission of the Learned Government Advocate (Crl.Side) is legally sustainable, therefore holds no violation of the mandatory condition imposed in Section 42(1) & (2) of NDPS Act, 1985.



19. For the said reasons, these Criminal Original Petitions are dismissed. The above observation is confined to the bail petition above and shall not prejudice the right of the accused persons to canvass all these point before the Court below at the time of trial.

-sd/-
29/04/2022

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

TRUE COPY

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

TO

1 THE ADDITIONAL SESSIONS SPECIAL COURT,
(UNDER EC & NDPS ACT CASES) AT SALEM.

2 THE INSPECTOR OF POLICE,
ADHIYAMANKOTTAI POLICE STATION,
DHARMAPURI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM

4 THE OFFICER INCHARGE
DISTRICT PRISON, DHARMAPURI,
DHARMAPURI DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

CC to M/S. V.RAJAMOHAN Advocate on payment of necessary charges

CRL OP.8274 & 9164/2022

Date :29/04/2022

JPA 02/05/2022