



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Fifth day of July Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice G.K. ILANTHIRAIYAN

CRIMINAL ORIGINAL PETITION No.11674 of 2022

IN C.C.NO.65 of 2020
(Additional NDPS Court-I, Chennai)

POORNA CHANDRA PANGI

[PETITIONER / ACCUSED]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
NIB CID
CHENNAI.
CRIME NO.94 OF 2019.

[RESPONDENT]

For Petitioner : MR.V.K.SATHYAMOORTHY, Advocate for
M/S. S.JAYAPRAKASH Advocate

For Respondent : MR.A.DAMODARAN, Additional public Prosecutor

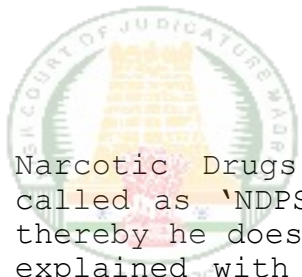
PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who was arrested and remanded to judicial custody on 24.09.2019 for the alleged offences punishable under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act in CC.No.65 of 2020 on the file of Additional NDPS Court-I, Chennai in respect of crime No.94 of 2019 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner was found in possession of 24 kg of 'ganja' at Platform No.6 in Central Railway Station, Chennai.

3. Mr.V.K.Sathyamoorthy, the learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 24.09.2019. The respondent failed to follow the mandatory procedures as contemplated under Section 42 and Section 50 of The



Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as 'NDPS Act'. The petitioner is hailing from Andhra Pradesh, thereby he does not know Tamil. Though the right of the petitioner was explained with regard to search as contemplated under Section 50 of the NDPS Act by translator, prosecution failed to mention the date of the search and time of the search and failed to mention, who translated to the petitioner in his language. Likewise, the respondent recorded the petitioner's confession statement, in which also the prosecution failed to state that who translated the statement of the petitioner, which was in Hindi. When it being so, he was not explained about his arrest for what reason, by translator. There is absolutely bereft of facts with regard to translator in all the procedures. He further submitted that when the petitioner was remanded to judicial custody, he was not explained in his language about his remand. The learned Judicial Magistrate mechanically remanded the petitioner without explaining the grounds of arrest and remand in language known to him. That apart, the alleged contraband was seized from the petitioner's possession on 24.09.2019, whereas the contraband was produced before the Magistrate only on 30.09.2019. The respondent ought to have produced the contraband within the period of 72 hours from the time of seizure of the contraband. Therefore, the respondent failed to follow the mandates as contemplated under Sections 42 and 50 of NDPS Act.

3.1 He further submitted that the petitioner was arrested and remanded to judicial custody on 24.09.2019. The respondent completed investigation and filed final report and the same has been taken cognizance in CC.No.65 of 2020 on the file of the Additional NDPS Court-I, Chennai. For the past two years, the respondent failed to proceed with the trial and so far, P.W.1 alone was examined, that too, partly. Therefore, long duration of the custody would have prevented the petitioner from engaging good defence advocate for proper defence before the trial court. In support of his contention, he relied upon the judgment in the case of Jagjeet Singh & Ors Vs. Ashish Mishra @ Monu & Anr reported in 2022 LiveLaw(SC) 376, wherein the Hon'ble Supreme Court of India issued the guidelines to be followed while considering the petition for bail as follows:

- (i) nature and gravity of the accusation;
- (ii) severity of the punishment in the event of conviction;
- (iii) danger of the accused absconding or fleeing, if released on bail;
- (iv) character, behaviour, means, position and standing of the accused;
- (v) likelihood of the offence being repeated;



(vi) reasonable apprehension of the witnesses being influenced; and

(vii) danger, of course, of justice being thwarted by grant of bail."

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Further held that a Court while deciding an application for bail, should refrain from evaluating or undertaking a detailed assessment of evidence, as the same is not a relevant consideration at the threshold stage. While a Court may examine prima facie issues, including any reasonable grounds whether the accused committed an offence or the severity of the offence itself, an extensive consideration of merits which has the potential to prejudice either the case of the prosecution or the defence, is undesirable. It is thus deemed appropriate to outrightly clarify that neither have we considered the merits of the case nor are we inclined to comment on the evidence collected by the SIT in the present case.

3.2 He also relied upon the judgment in the case of Union of India Vs. K.A.Najeeb reported in (2021) 3 SCC 733, wherein the Hon'ble Supreme Court of India held as follows:

"Besides the conditions to be imposed by the trial Court while releasing the respondent, it would serve the best interest of justice and the society-at-large to impose some additional conditions that the respondent shall mark his presence every week on Monday at 10AM at the local police station and inform in writing that he is not involved in any other new crime. The respondent shall also refrain from participating in any activity which might enrage communal sentiments. In case the respondent is found to have violated any of his bail conditions or attempted to have tampered the evidence, influence witnesses, or hamper the trial in any other way, then the Special Court shall be at liberty to cancel his bail forthwith."

4. Mr.A.Damodaran, Additional Public Prosecutor appearing for the respondent police would submit that on the date of occurrence, the petitioner was found in possession of 24 kg of 'ganja'. Therefore, he was arrested and remanded to judicial custody on 24.09.2019 for the alleged offences punishable under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act in crime No.94 of 2019 on the file of the respondent police. Thereafter, the respondent completed investigation and filed final report and now it is pending trial in CC.No.65 of 2020 on the file of the Additional NDPS Court-I, Chennai. He would further submit that admittedly the petitioner was in possession of contraband weighing 24 kg and it is a commercial quantity. Therefore, there is a bar under section 37 of NDPS Act. Hence, he vehemently opposed to grant bail to the petitioner.



5. Heard, Mr.V.K.Sathyamoorthy, the learned counsel for the petitioner, and Mr.A.Damodaran, Additional Public Prosecutor appearing for the respondent police.

6. The petitioner is the sole accused. He was found in possession of 24 kg of 'ganja' at Platform No.6, Central Railway Station, Chennai. In pursuant to the same, he was arrested and remanded to judicial custody on 24.09.2019. The respondent completed investigation and filed final report and now it is pending trial in CC.No.65 of 2020 on the file of the Additional NDPS Court-I, Chennai. Due to corona, the trial court could not complete the trial. Now the prosecution has examined P.W.1 and for cross examination of P.W.1, it is pending. The learned Additional Public Prosecutor also submitted that there are totally six witnesses alone and they are about to complete their evidence within a period of two months.

7. It is true that the Hon'ble Supreme Court of India issued guidelines to be taken into consideration while considering bail petition in the normal cases, whereas in the case on hand, the petitioner was in possession of contraband weighing 24 kg and it is a commercial quantity. Therefore, there is a bar under section 37 of NDPS Act. It is relevant to extract the provision under Section 37 of NDPS Act hereunder:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

In this regard, the Hon'ble Supreme Court of India held in the case of Union of India Vs. Shiv Shanker Kesari reported in Appeal (crl.) No.1223 of 2007 dated 14.09.2007 as follows:



7. The expression used in Section 37 (1)(b) (ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word 'reasonable'.

"7... In Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.

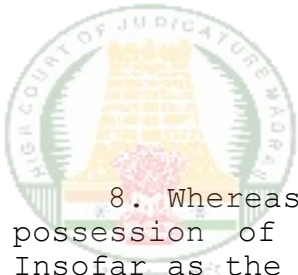
(See: Municipal Corporation of Delhi v. M/s JaganNath Ashok Kumar and another (1987) 4 SCC 497. and Gujarat Water Supplies and Sewerage Board v. Unique Erectors (Gujarat) Pvt. Ltd. and another [(1989) 1 SCC 532].

[...]

10. The word 'reasonable' signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See: Municipal Corporation of Greater Mumbai and another v. Kamla Mills Ltd. (2003) 6 SCC 315).

11. The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

Further held that based on the above precedent, the test which the courts are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of the offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.



8. Whereas in the case on hand, admittedly the petitioner was in possession of 24 kg of 'ganja', which is a commercial quantity. Insofar as the procedural lapses as pointed by the learned counsel for the petitioner, they have to be considered only before the trial court during trial. Though the statement recorded under Section 67 of NDPS Act is inadmissible, as held by the Hon'ble Supreme Court of India in the case of Tofan Singh Vs. State of Tamilnadu reported in (2021) 4 SCC 1, it cannot be considered while considering the application for bail.

9. Considering the facts and circumstances of the case, this Court is not inclined to grant bail to the petitioner. Accordingly, this criminal original petition is dismissed. However, the Additional NDPS Court-I, Chennai is directed to complete the trial in CC.No.65 of 2020 within a period of three months from the date of receipt of copy of this order.

-sd/-
05/07/2022

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 ADDITIONAL NDPS COURT-I,
CHENNAI

2 THE INSPECTOR OF POLICE,
NIB CID CHENNAI.

3 THE SUPERINTENDENT,
CENTRAL PRISON, CHENNAI

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

CRL OP.11674/2022

Date :05/07/2022

JPA 08/07/2022