



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

WEB COPY

CORAM:

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.13533 of 2022

S.Jaffer Sathik

.. Petitioner

Vs.

The State of rep. By
The Inspector of Police,
H-6, R.K.Nagar Police Station,
Chennai.

.. Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Crime No.155 of 2022, on the file of the respondent police.

For Petitioner : Mr.S.Natarajan
for M/s.N.Nishah Ahamed

For Respondent : Mr.S.Udaya Kumar
Government Advocate (crl side)

ORDER

The petitioner, who was arrested for the offences punishable under Sections 8(c) r/w 22(C), 29(i) of the Narcotic Drugs and Psychotropic Substances Act 1985 in Crime No.155 of 2022, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner was found in possession of 1101 Nitrazepam tablets which contains Nitrazepam, a prohibited psychotropic substance. The petitioner was arrested on 06.03.2022.

3. The present petition is filed seeking bail on the ground that the petitioner was taken into custody on 05.03.2022 itself and the case has been falsely foisted against him.

4. Learned counsel for the petitioner would state that to prove that the petitioner was taken into custody on a day before the alleged recovery and remand thereafter, he had taken an application



for production of CCTV footage of the police station which even after two months, the respondent police has not produced it. He would further contend that the alleged seizure of contraband is below the commercial quantity. When this bail petition was filed on 06th June 2022 and till filing of this bail petition, the respondent police has not filed final report.

5. Learned Government Advocate (crl side) appearing for the respondent would submit that the final report has already been filed before the Special Court for NDPS on 08th June 2022. The Analysis Report indicates that the Nitrazepam tablet recovered from the petitioner contains Nitrazepam and the total weight of the tablet seized is 609 grams, which exceeds the limit of 500gm falls under the commercial quantity and the bar under Section 37 of the NDPS Act applies to the facts of the case. The Analysis Report indicates that the tablets on chemical analysis found to contain Nitrazepam which belongs to Benzodiazepine group of drugs and it is a Psychotropic Substance covered under Narcotic Drugs and Psychotropic Substances Act, 1985. Even in the wrapper of the tablet, the presence of Nitrazepam IP is mentioned and the strips containing 10 tablets contains 10mg of Nitrazepam IP (out of 5.66 gms of the total weight). Therefore, the learned counsel for the petitioner pointing out the said weight of the Nitrazepam in the total weight of the tablet seized, would contend that the actual psychotropic substance present in the alleged seizure is less than the commercial quantity.

6. This Court considering bail is not inclined to give finding on the said submission. It is suffice to consider that whatever seized from the petitioner is a therapeutic tablet which incidentally contains psychotropic substance. The petitioner has failed to prove the legal possession of the said tablet, which has lead to the arrest. Now the prosecution has completed the investigation and has filed the final report. To afford opportunity to the petitioner to defend himself, to prove the the said possession of the tablet and taking note of the fact that there is doubt regarding the weight of psychotropic substance alleged to have been seized from the petitioner, to ensure his right to defend, bail is granted to the petitioner. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions;

(a) the petitioner shall execute a bond for a sum of **Rs.50,000/- (Rupees Fifty Thousand only)** with two sureties, each for a like sum to the satisfaction of the learned **XV Metropolitan Magistrate, George Town Court.**

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;



(c) the petitioner is directed to appear before the Special Court on the first working day of every month until the completion of the trial.

(d) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(e) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala** [(2005)AIR SCW 5560];

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

-sd/-

16/06/2022

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 METROPOLITAN MAGISTRATE,
XV, GEORGE TOWN, CHENNAI.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
H-6 RK NAGAR POLICE STATION,
CHENNAI

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI

+2 CC to M/S.N.NISHAR AHAMED Advocate on payment of necessary charges SR.NO.9448

CRL OP.13533/2022

Date :16/06/2022

TA-17/06/2022