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CrI.OP.No.15117 of 2022

RESERVED ON : 06.07.2022

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CRL.OP.NO.15117 OF 2022

G.K.ILANTHIRAIYAN, J.

The petitioner, who was arrested and remanded to judicial custody on 31.03.2022 for the alleged offences punishable under Sections 8(c), 22(a) & (c), 29(1) NDPS Act, 1985 along with Sections 465, 468, 472 of IPC in Crime No.81 of 2022 pending on the file of the respondent police in R-2, Kodambakkam Police Station, Chennai, seeks bail.

2. The case of the prosecution is that on 17.03.2022, on receipt of secret information, the respondent Police after obtaining permission made search and conducted enquiry with the accused persons. All the accused were searched and explained their rights under NDPS Act. After following the procedure, search was conducted and the contraband which was seized from the accused persons were *Nitravit -10 4770 tablets (4770 tablets x 0.554 = 2642.58 gms), Alprasafe tablets -130 tablets, Unwanted kit -145 tablets and Tydol -2320 tablets*. Based on the other accused confession statement, the petitioner was arrested on 31.03.2022.



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The petitioner is arrayed as 7th accused. The petitioner has been implicated as an accused since he is the main supplier of the medicine all over India in the name of M/s.Voiz Med Pharma Pvt.Ltd, wherein he delivers drugs through Courier.

3. Mr.R.Dakshina Murthy, learned counsel for the petitioner would submit that the medical shop by name ***M/s. Shri Ram Medicos Manesar*** owned by the petitioner and he is a licensed owner. He further submits that the prosecution never failed to produce any material to connect the petitioner's Medical Shop with the M/s.Voiz Med Pharma Pvt.Ltd and the said Medical Shop is alien to the petitioner and no way connected with any manner or mode to the said Medical Shop. The petitioner has been implicated as an accused only on the confession statement of the co-accused and except the confession there is no other material to connect the petitioner that he only supplied the drugs. The statement recorded under Section 67 of NDPS Act is inadmissible in evidence and as such the petitioner cannot be prosecuted on the confession statement of the co-accused, which is inadmissible in



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evidence. The petitioner was arrested and remanded to Judicial Custody on 31.03.2022. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India in a case of ***Tofan Singh Vs. State of Tamil Nadu*** reported in **MANU/SC/0797/2020**.

4. The learned Additional Public Prosecutor submits that the petitioner is arrayed as A7 and the entire contraband were seized from the possession of A1 to A6 and they were in conscious possession jointly. All there statements were recorded under Section 67 of NDPS Act. The total contraband involved in this case were ***Nitravit -10 4770 tablets (4770 tablets x 0.554 = 2642.58 gms), Alprasafe tablets -130 tablets, Unwanted kit -145 tablets and Tydol -2320 tablets***, which is a commercial quantity. As far as the petitioner is concerned, he is running a medical shop in the name of ***M/s. Shri Ram Medicos Manesar*** in Haryana District. The petitioner is the main supplier and he supplies the medicine all over India in the name of M/s.Voiz Med Pharma Pvt.Ltd. The first accused received drug from the petitioner through M/s. India Mart Online company. The petitioner delivered the medicines through



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Courier. Therefore, he is the person to supply to the drug peddlers all over India. He further submitted that, though the petitioner has been implicated as an accused on the confession statement recorded under Section 67 of NDPS Act, it is inadmissible in evidence, it can be considered only during the trial.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

6. There were totally 7 accused and the petitioner is arrayed as 7th accused. Even according to the petitioner, the petitioner is running a medical shop in the name of *M/s. Shri Ram Medicos Manesar, Haryana District which is 20 km away from Delhi* with valid license. The petitioner supplied drugs from the Medical Shop in the name of M/s. Voiz Med Pharma Pvt.Ltd. Apart from the confession statement of A1 to A6, bills were recovered to prove the supply of drugs.



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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 supplied the drugs and it is commercial quantity. Therefore, 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:



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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



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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



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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. In the case on hand, the petitioner supplied the drugs and it is commercial quantity. Though the petitioner has been implicated as an accused on the confession statement of the co-accused recorded under Section 67 of NDPS Act, it is inadmissible in evidence as held by the Hon'ble Supreme Court of India in a case of ***Tofan Singh Vs. State of Tamil Nadu*** reported in **MANU/SC/0797/2020**. However, it can be considered only during the trial and it cannot be considered while considering the bail petition. That apart, the petitioner is the main drug peddler and supplied all over India. Hence, this Court is not inclined to grant bail to the petitioner.

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