

Crl.O.P.Nos.18440, 19025, 19374, 20553, 18913 and 20245 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2022

DELIVERED ON : 02.09.2022

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.18440, 19025, 19374, 20553, 18913 and 20245 of 2022

Crl.O.P.Nos.18440, 19025, 19374 and 20553 of 2022:-

- | | |
|--------------------------|---|
| 1. Sachin @ Sachin Yadav | ... Petitioner in Crl.O.P.No.18440 of 2022 |
| 2. Kishore | ... Petitioner in Crl.O.P.No.19025 of 2022 |
| 3. Muthupandi | ... Petitioner in Crl.O.P.No.19374 of 2022 |
| 4. Gokulan | ... Petitioner in Crl.O.P.No.20553 of 2022 |

Vs.

State of Tamil Nadu

Represented by

The Inspector of Police,

R-2, Kodambakkam Police Station,

Chennai.

(Crime No.81 of 2022) ... Respondents in **(in all Crl.O.Ps)**

Common Prayer:- Criminal Original Petitions are filed under Section 439 of Cr.P.C. praying to enlarge the petitioners on bail in Crime No.81 of 2022 on the file of Inspector of Police, R2, Kodambakkam Police Station, Chennai.

For Petitioner

in Crl.O.P.No.18440 of 2022

: Mr.G.M.Ramasubramaniam
for Mr.G.R.Hari

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For Petitioner
in Crl.O.P.Nos.19374
and 20553 of 2022 : Mr.R.C.Paul Kanagaraj

For Petitioner
in Crl.O.P.No.19025 of 2022 : Mr.R.Surya Prakash

For Respondent **in all Crl.O.Ps** : Mr.A.Damodaran
Additional Public Prosecutor

Crl.O.P.Nos.18913 and 20245 of 2022:-

- | | |
|-----------------|---|
| 1. Udhayaseelan | ... Petitioner in Crl.O.P.No.18913 of 2022 |
| 2. Jairullah | ... Petitioner in Crl.O.P.No.20245 of 2022 |

Vs.

State represented by
The Inspector of Police,
S-5, Pallavaram Police Station,
Chennai.

(Crime No.520 of 2022) ... Respondent in **(both Crl.O.Ps)**

Common Prayer:- Criminal Original Petitions are filed under Section 439 of Cr.P.C. praying to enlarge the petitioners on bail in Crime No.520 of 2022 pending investigation on the file of the respondent.

For Petitioner in Crl.O.P.No.18913 of 2022	: Mr.K.G.Senthil Kumar
For Petitioner in Crl.O.P.No.20245 of 2022	: Mr.K.M.Mohamed Ziauddin

For Respondent **(in both Crl.O.Ps)** : Mr.A.Damodaran
Additional Public Prosecutor

COMMON ORDER

All these Criminal Original Petitions have been filed to enlarge the petitioners on bail in Crime No.81 of 2022 and in Crime No.520 of 2022 pending investigation before their respective respondents.

2. The case of the prosecution in Crl.O.P.Nos.18440, 19025, 19374 and 20553 of 2022 is that on 17.03.2022, the respondent Police received a secret information that near Trustpuram Playground, the accused persons A5 and A6 are selling drug tablets. On receipt of the same, a team of Police went to the place of occurrence and apprehended A5 and A6. On enquiry, they informed their address and after following the procedure as contemplated under Section 50 of NDPS Act, seized the contrabands viz, Nitroxit-10 mg, Alpraxone tablets, Unwanted Kit and Tydol tablets from A5 and A6. Based on their confession, the accused A7 was arrested and remanded to judicial custody. The 7th accused is running a Medical Shop in the name of “Shri Ram Medicos” in Haryana District. He is a main supplier and he supplied the medicine to all over India in the name of “Voiz Med Pharma Pvt.Ltd”. The first accused purchased drugs

Crl.O.P.Nos.18440, 19025, 19374, 20553, 18913 and 20245 of 2022 from the 7th accused through India Mart online company. The 7th accused delivered the drugs through courier. Hence, the complaint.

3. The learned counsel for the petitioner in Crl.O.P.No.18440 of 2022 submitted that the petitioner is arrayed as A7. Even according to the case of the prosecution, no recovery was made from the petitioner. He possessed license under Form 21 of Drugs and Cosmetics Act and running a Medical Shop in the name of “Sriram Medicos” situated at Haryana. He also produced the GST form and drug license. He is a Diploma holder in Pharmacy and he sells drugs authorized by the license under Drugs and Cosmetics Act at MRP rates directly as well as on-line. He is also authorized to sell the drugs involved in the present case namely Nitrovit 10 mg, Tydol-100 mg, Unwanted Kit-10 mg and Alprasafe-5 mg, under license possessed by him in Form 21 under Drugs and Cosmetics Act. He is also authorized to sell all the drugs except Schedule “X” drugs. None of the drugs are referred by the prosecution under the said schedule. He further submitted that the petitioner has committed no offence, even as per the prosecution, as per Rule 65(A) of NDPS Rules 1985, viz, Sale,

Crl.O.P.Nos.18440, 19025, 19374, 20553, 18913 and 20245 of 2022 purchase, consumption or use of psychotropic substances specified in Schedule I permitted only for the purposes mentioned in Chapter VIIA. Therefore, the petitioner has been falsely foisted under Sections 8(c), 22(a), 22(c), 29(1) of NDPS Act and under Sections 465, 468 and 472 of IPC and arrested the accused/A7, on 29.03.2022 at Gurgaon and remanded to judicial custody on 31.03.2022.

4. The learned counsel for the petitioners in Crl.O.P.No.19374 and 20553 of 2022 submitted that the petitioners are arrayed as A3 and A4. They are B.E. graduates and permanent residents of Coimbatore. A3 was working as a Service Engineer in Scanner Electro lab and control systems company in Coimbatore for a monthly salary. Thereafter, A3 and A4, joined in the Pharma Company run by the first and second accused in the name of “Voizmed Pharma” for monthly salary of Rs.15,000/-. Therefore, they did not know that “Voizmed Pharma” was a fake company and buying and selling of Nitrovet and Tydol tablets was an offence under NDPS Act. He further submitted that even assuming that the case of the prosecution is true and the contraband seized would fall under NDPS Act

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that too as a commercial quantity, still the prosecution had not established that Nitrovet and Tydol are psychotropic substances scheduled under NDPS Act. Even assuming that those tablets are coming under the Schedule under NDPS Act, it is not a commercial quantity and it is in-between quantity. Therefore, the conditions as contemplated under Section 37 of NDPS Act would not attract in the present case. According to the case of the prosecution, A1 and A2 are purchasers and they are supplying drugs to their customers. They are running a business for their benefit and as far as the petitioners are concerned they are only employees under A1 and A2 and they have nothing to do with the purchase and selling of drugs. Therefore, the petitioners have been falsely foisted under Sections 8(c), 22(a), 22(c), 29(1) of NDPS Act and under Sections 465, 468 and 472 of IPC and they were arrested and remanded to judicial custody, on 17.03.2022.

5. The learned counsel for the petitioner in Crl.O.P.No.19025 of 2022 submitted that the petitioner is arrayed as A5. According to the case of the prosecution, the petitioner was found in illegal possession of

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Nitravet-10 mg (150 tablets) and Tydol-100 mg (100 Tablets). His father is working as a ticket collector in theatre. While being so, on 13.03.2022, the petitioner was illegally detained by the Inspector of Police, K.K.Nagar and thereafter, he was released on the very same day. Again, on 15.03.2022, the respondent called the petitioner's father and enquired about the petitioner/A5. Thereafter, they came to his house and arrested the petitioner by creating false story that the petitioner was in possession of the contraband. Further alleged that when the petitioner was arrested, he was selling the contraband to public. Therefore, the petitioner has been falsely foisted under Sections 8(c), 22(a), 22(c), 29(1) of NDPS Act and under Sections 465, 468 and 472 of IPC and he was arrested and remanded to judicial custody, on 17.03.2022.

6. A perusal of the counter filed by the learned Additional Public Prosecutor appearing for the respondent Police revealed that there are totally 7 accused in which the petitioners are arrayed as A3, A4, A5 and A7. A7 was running a Medical shop in the name of "Sriram Medicos" situated at Haryana. A Huge quantity of Narcotic and Psychotropic

Crl.O.P.Nos.18440, 19025, 19374, 20553, 18913 and 20245 of 2022 substances were recovered from the petitioners and other accused persons. It is a commercial quantity. Therefore, there is a bar under Section 37 of the NDPS Act for granting bail to the petitioners. The learned counsel for the petitioner in Crl.O.P.No.18440 of 2022 contended that A7 is a license holder under Form 21 and therefore, he can sell the drugs under Schedule C and C (1). The drugs called Nitravet and Tydol are scheduled drug under the NDPS Act. As per the Drugs and Cosmetic Rules, A7 is selling the drug. Therefore, no offence is made out under the NDPS Act. The drugs seized from the accused were Nitrazepam, Tapentadol, Alprazolam, Mifepristone and M Soprostol. Admittedly, A7 obtained license under Form 21 to run a Medical Shop. It provides license to sell, stock or exhibit or offer for sale or distribute by retail - the drugs specified under Schedule C and C(1) (excluding those specified in Schedule X). He was not licensed to sell the drugs in Schedule H1 of the Drugs and Cosmetics Rules, 1945. The drugs Nitrazepam, Tapentadol, Alprazolam are entries 36, 48 and 1 of Schedule H1 of the Drugs and Cosmetic Rules, 1945, in which the Nitrazepam and Alprazolam are psychotropic substances as per entries 64 and 30 in Schedule 1 of NDPS Act. The Rule 65 A of NDPS Rules, 1985

Crl.O.P.Nos.18440, 19025, 19374, 20553, 18913 and 20245 of 2022 provides that a person can sell psychotropic substances (mentioned in Schedule 1 of NDPS Act) only in accordance with the Drugs and Cosmetics Rules, 1945. Accordingly, no person shall sell, purchase, consume or use any psychotropic substances except in accordance with the Drugs and Cosmetics Rules, 1945. It provides for the conditions of licenses obtained under Form 21 (Rule 65 Clause 9(a) of the Drugs and Cosmetics Rules). Accordingly, the substances specified in Schedule H and Schedule H1 or Schedule X shall not be sold by retail except in accordance with the prescription of a registered Medical Practitioner. Further, the provisions under Section 80 of the NDPS Act provides that the provisions and rules made under the NDPS Act shall be read in addition to the Drugs and Cosmetics Act or Rules made thereunder. It says that the application of the Drugs and Cosmetics Act, 1940, not barred and makes it apparent that the provisions of the NDPS Act, 1985 and rules made thereunder are in addition to and not in derogation of the Drugs and Cosmetics Act, 1940, nor the Rules framed thereunder. Thus, it is clear that for violation of the provisions of the Drugs and Cosmetics Act, 1940 and rules framed thereunder, action can be initiated for offences

punishable under NDPS Act, 1985.

7. The Hon'ble Supreme Court of India observed in the case of ***“Union of India Vs Sanjeev V. Deshpande”*** in ***“(2014) 13 SCC 1”***, as follows,

“.....essentially the Drugs and Cosmetics Act, 1940, deals with various operations of manufacture, sale, purchase, etc., of drugs generally, whereas the Narcotic Drugs and Psychotropic Substances Act of 1985 deals with a more specific class of drugs, and therefore, a special law on the subject. Further the provisions of the Act operate in addition to the provisions of the 1940 Act.”

The Hon'ble Supreme Court of India also held in the case of ***“State of Punjab V. Rakesh Kumar”*** in the case of ***“(2019) 2 SCC 466”***, as follows,

“15. The NDPS Act, should not be read in exclusion to Drugs and Cosmetics Act, 1940. Additionally, it is prerogative of the State to prosecute the offender in accordance with law. In the present case, since the action of the accused respondents amounted to a prima violation of Section 8 of the NDPS Act, they were charged under Section 22 of the NDPS Act.”

16. In the light of the above observations, we find that decision rendered by the High Court holding that the accused respondents must be tried under the Drugs and Cosmetics Act, 1940, instead of the NDPS Act, as they were found in possession of “manufactured drugs” does not hold good in law.”

8. Though, the tablets Nitrazepam and Alprazolam are

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psychotropic substances of NDPS Act, it can be sold in accordance with the Drugs and Cosmetics Rules, 1945. Accordingly, both the tablets came under the Schedule H1 which require prescription from a registered medical practitioner. In the case on hand, the first and second accused are the purchasers of those drugs from A7 through on-line. Therefore, the Section 80 of NDPS Act, Rule 65A of the NDPS Rules and Rule 65 of the Drugs and Cosmetics Act have to be read together. It can be understood that any person selling psychotropic substances without abiding the Drugs and Cosmetics Rules, he will be liable to be punished under the NDPS Act. Merely, because A7 claims to have the license or has a degree in Pharma education, it does not act as a safeguard for prosecuting under the NDPS Act, when the psychotropic substances were sold in conflict with the provisions of the Drugs and Cosmetics Rules. That apart, he obtained license under Form 21 and as such he was not licensed to sell the drugs mentioned in Schedule H1 of the Drugs and Cosmetics Rules. He can only sell the drugs contained under the Schedule C and C1 as per the license under Form 21.

9. In this regard, the **Hon'ble High Court of Delhi** held in the

case of ***“Arvind Kumar Vs State thorough the Inspector, Central Bureau of Narcotics (2020 SCC Online Del 395)***, followed the above said 2 dictum of the Hon'ble Supreme Court while it dealt with a similar case wherein the accused were seeking bail for offence under Sections 8, 22 and 29 of the NDPS Act, 1985, with allegations that the entire quantity of seized narcotic and psychotropic substances, Harish Chander, proprietor of M/s Shiv Medicos and the applicant in that case, proprietor to M/s City Enterprises had not followed the mandated provisions of Rule 65 of the Drugs and Cosmetics Rules, 1945.

“Further, the said co-Accused Harish Chander as per the complaint was not able to produce any purchase or sale documents for these narcotics and psychotropic medicines which were thus seized under Rule 65 of the Drugs and Cosmetics Rules, 1945 for violation of Rule 65 A of the NDPS Act, 1985. The medicines so seized, were to the effect:-

- “i. Alprazolam – 2,06,125 tables
- ii. Pentazocineinj – 3,194 ampules
- iii. Nitrazepam tablet – 20,400 tables.
- iv. Tramadol – 1,28,880 tablets & capsules
- v. Diazepam – 1,400 tablets.
- vi. Diazepam inj. - 380 ampules.
- vii. Lorazepam – 31260 tables.
- viii. Chlordiazepoxide – 7,800 tablets.
- ix. Clonazepam – 3,190 tablets.
- x. Zolpidem – 300 tablets
- xi. Buprenorphineinj – 6,050 ampules.

xii. Codeine Phosphate Syrup (100 ml) – 9,237 bottles”
and samples were stated to have been from the medicines seized from
Sh.Harish Chander, proprietor of M/s Shiv Medicos.

It is further submitted that the Hon'ble Delhi High Court referred to “***Sanjeev Vs. Deshpandey (supra) and Rakesh Kumar (supra)***” and observed that it has categorically been laid down that the provisions of the NDPS Act, 1985 cannot be read in exclusion to the Drugs and Cosmetics Act, 1940 and that if the action of an accused amounts to a *prima facie* violation of Section 8 of the NDPS Act, 1985, the circumstances and the gravity of the offence does not entitle such an accused to be granted bail.”

10. A7 is running a Medical Shop in the style of “Sriram Medicos” situated at Haryana District. He is a main supplier and he supplies drugs to all over India in the name of “Viozmed Pharma Pvt. Ltd”. The first and second accused purchased the drugs through India Mart on-line company and the drugs were supplied through courier. The contraband seized from the accused persons are Nitrazepam, Tapentadol, Alprazolam, Mifepristone and M Soprostol.

11. Therefore, the action of A7 amounted a *prima facie* violation of the Section 8 of NDPS Act and all the accused persons are charged

Crl.O.P.Nos.18440, 19025, 19374, 20553, 18913 and 20245 of 2022 under Section 22 of the NDPS Act.

12. In view of the above facts and circumstances and the gravity of the offences committed by the petitioners, this Court is not inclined to grant bail to the petitioners in Crl.O.P.Nos.18440, 19025, 19374 and 20553 of 2022. Accordingly, the petitions in Crl.O.P.Nos.18440, 19025, 19374 and 20553 of 2022 are dismissed.

13. Insofar as the Crl.O.P.Nos.18913 and 20245 of 2022 are concerned, the case of the prosecution is that the petitioners are arrayed as A1 and A2 respectively. The respondent Police received a secret information and went to the place of occurrence and found that the petitioners and other accused were selling Tydol, Vorth TP-50 and Injections. Therefore, the petitioners were arrested and remanded to judicial custody on 30.06.2022 for the offences punishable under Sections 21(b), 27(a) and 25 of NDPS Act.

14. The learned counsels for the petitioners in Crl.O.P.Nos.18913 and 20245 of 2022 submitted that the alleged

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contraband seized by the respondent is not a narcotic drug and it comes
only under the Drugs and Cosmetics Act for which no offences is made
out under the NDPS Act. They also have no previous bad antecedents and
a false case has been foisted against them.

15. It is seen that in these petitions also the petitioners raised the
same grounds as raised in the other petitions. Therefore, this Court is not
inclined to grant bail to the petitioners in Crl.O.P.Nos.18913 and 20245 of
2022. Accordingly, the petitions in Crl.O.P.Nos.18913 and 20245 of 2022
are also dismissed.

02.09.2022

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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G.K.ILANTHIRAIYAN, J.

mn

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To

- 1.The Inspector of Police,
R-2, Kodambakkam Police Station,
Chennai.
2. The Inspector of Police,
S-5, Pallavaram Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

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