



Crl.O.P.Nos.19738, 19739 & 20149 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2022

CORAM

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

Crl.O.P.Nos.19738, 19739 & 20149 of 2022

1.Balasubramaniyan	...Petitioner in Crl.O.P.No.19738 of 2022
2.Pandurangam	...Petitioner in Crl.O.P.No.19739 of 2022
3.Gopinath Singh	...Petitioner in Crl.O.P.No.20149 of 2022

Vs.

State rep by:

The Inspector of Police,
H-5, New Washermenpet Police Station,
Waashermenpet,
Chennai-600 081.

Crime No.283 of 2022

..Respondent in all Crl.O.P's

PRAYER: Criminal Original Petitions are filed under Section 439 of Cr.P.C. praying to enlarge the petitioners on bail pending investigation in Crime No.283 of 2022 on the file of the Respondent Police.

For Petitioners : Mr.R.Vivekanandan
for M/s.L.Srileka
in Crl.O.P.Nos.19738 & 19739 of 2022

Mr.G.Thiyagarajan
in Crl.O.P.No.20149 of 2022



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For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
in all Crl.O.P's

ORDER

The petitioners, who were arrested and remanded to judicial custody on 11.04.2022 for the offences punishable under Sections 8(c), 22(b) and 29(1) of the Narcotic Drug & Psychotropic Substances Act, 1985 in Crime No.283 of 2022 on the file of the respondent police, seek bail.

2. The case of the prosecution is that on 11.04.2022 at about 09.15 hours, the respondent police received a secret information about the illegal sales of narcotic substances i.e. Drugs. Immediately the respondent police conducted search at Annai Indhira Gandhi Nagar, near Railway Track and at that time, five persons Viz., Pandurankan/A1, Gopinath Singh/A2, Santhosh Kumar/A3, Balasubramaniyan/A4 and Sowbar @ Sowbar Sathik/A5/petitioner herein were found standing there suspiciously. At that time, the respondent police conducted a check up with them and found that the accused had illegally transported the Drugs injection disposable syringe - 86, Disposable Needles - 94 and



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Drug tables i.e., 1) Nitravet (10 mg) table - 15 strips 315 numbers which contains 179.55 grams, 2) Nitrosun (5 mg) tablet - 10 strips, 100 numbers which contains 55 grams, 3) Nitrosun (10 mg) tablet - 6 strips, 60 numbers which contains 33.60 grams, 4) Tydol (100 mg) tablet - 10 strips, 200 numbers which contains 52 grams and 5) Spasmo Pxyzyvonplus tablet - 8 strips, 528 numbers which contains 327.36 grams. Totally, 1203 numbers which contains 647.51 grams, which comes under commercial quantity. Immediately, the respondent police arrested the accused persons (A1 to A4) and recorded their confession statements and seized drugs injection disposable syringe -86, disposable needles - 94 and Drugs Tablets 1203 numbers which contains 647.51 grams, 6 cell phones and one Honda Dio bike bearing registration No.TN 13 M 8553 from them under the cover of seizure mahazar in the presence of police witnesses. Hence, the case.

3. The learned counsel appearing for the petitioners in CrI.O.P.Nos.19738 & 19739 of 2022 would submit that the first and second petitioners are arrayed as A4 and A1 respectively. The second petitioner/A1 is the whole seller of drugs and he has licence under the



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Drugs and Cosmetics Act, 1940. Thereby, he is licensed to sell the drugs under Schedules C, C(1) and X of the Drugs and Cosmetics Rules, 1945 and Medical Devices as per Medical Devices Rules, 2017. As per Schedule Item No.221 of the table in the Narcotic Drug & Psychotropic Substances Act, 1985, the small quantity of Nitrazepam is 20 gram and the commercial quantity is above 500 gram. Whereas in F.I.R, it is found that there is no recovery and possession of any contraband from the petitioners/A1 & A4. In fact, Tydol (40 tablets) 10.4 grams and spasmoproxyvon Plus (320 tablets) 198.4 grams totalling (208.8 grams) which does not come under the Schedule Substances of Narcotic Drug & Psychotropic Substances Act, 1985 to constitute the offences against the petitioners.

4. Even according to the case of the prosecution, A4 is none other than the employee of A1 and there is no recovery from A4 and he is not under possession of any contraband. He would further submit that drug - Tydol seized from the petitioners is neither a narcotic drug nor a commercial quantity. That apart, the petitioners/A1 & A4 are suffering



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incarceration from the date of arrest i.e on 11.04.2022. Hence, he prays to grant bail to the petitioners/A & A4.

5. The learned counsel appearing for the petitioner in Crl.O.P.No.20149 of 2022 would submit that the third petitioner is arrayed as A2. He was running a medical shop, having licence for the shop in the name of his wife and he was abducted by the respondent on 10.04.2022 itself. Immediately, thereafter his wife lodged a complaint before local Police Station and she was directed to approach the respondent police. However, the third petitioner/A2 was arrested and remanded to judicial custody on 11.04.2022.

6. The learned counsel further contended that the petitioner/A2 is the owner of the medical shop namely, Madhurai Medicals and Fancy at Sullurpettah, Andhra Pradesh and it was duly registered under the Drugs Control Administration, Government of Andhra Pradesh vide Registration No.96326. He is a physically handicapped person having 80% of disability and having his wife and 7 years old female child. Even



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assuming that the petitioner/A2 was in possession of the alleged drugs, is not a commercial quantity. Further, the learned counsel also produced the complaint lodged before the local Police Station by his wife before this Court. Hence, he prays to grant bail to the petitioner/A2.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that A1 had obtained licence through Form 21 to run medical shop. Form 21 of the Drugs & Cosmetics Rules, 1945, only 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]. Despite, he was not licensed to sell the drugs in Schedule H1 of the Drugs & Cosmetic Rules, 1945, which is illegal as far as licences under Form 21 are concerned.

8. He would further submit that the petitioners were in possession of Nitrazepam, Tapentadol & Tramadol, which are entries 36, 48, 45 of Schedule H1 of the Drugs & Cosmetic Rules, 1945 and they are Psychotropic substances - entries 64, 30 & 238, 2H in Schedule 1 of



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NDPS Act. Therefore, the Rule 65 A of the NDPS Act provides that a person can sell psychotropic substance (mentioned Schedule I of the NDPS Act) only in accordance with the Drugs and Cosmetics Rules, 1945 and he has also relied upon the Rule 65 A in respect of sale, purchase, consumption or use of psychotropic substances to that effect. Therefore, A1 and A2, being the owners of the medical shop, they have to follow the Rule 65 A of NDPS Rules, however, without any prescription of the doctors, they cannot sell the medicines by whole sale or retail. He would furthermore submit that, though the drugs come under commercial quantity, the impact of those drugs is very serious in nature. These kind of drugs would kill a person, if he/she consume those drugs more than two times. Now-a-days all the youngsters are using these kind of drugs illegally. Hence, he prays for dismissal of the bail petitions.

9. On a perusal of the materials available on records, it reveals that the drug (Tydol tablets) seized from A1 & A2 weighing 39 grams and 10.4 grams respectively; Nitrovet tablet seized from A1 weighing



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179.55 grams; Nitrosun 5 mg tablet weighing 55 grams and Nitrosun 10 mg tablet weighing 33.60 grams were seized from A1; Spasmo Proxyvon weighing 128.96 grams seized from A1, whereas the drug (Spasmo Proxyvon) seized from A2 weighing 198.4 grams in total. Though the drug i.e Spasmo Proxyvon attracts commercial quantity, other drugs do not come under commercial quantity. Even assuming that the drug (Spasmo Proxyvon tablets) categorically comes under commercial quantity, there is absolutely no material to connect A1 and A2 to come to a conclusion that they were under constructive possession of the drugs.

10. Even according to the case of the prosecution, A1, running a medical shop at Chennai obtained license in his name and A2 running a medical shop at Andhra Pradesh obtained license in his wife's name. However, both the accused persons were arrested in the Railway Station near Annai Indhira Gandhi Nagar, Chennai, which is within the jurisdiction of the respondent police. Further, on a perusal of the confession statements of A1 to A3, revealed that A1, A2 are the owners of their medical shops; A3 and A5 are the purchasers, who used to



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purchase medicines from A1 and A2; A4 is the employee of A1. As regards the confession statement of A3, revealed that he approached A2 and requested him to supply the drugs at Chennai. Accordingly, A2 brought the drugs from Andhra Pradesh to Chennai and supplied the same to A5. Therefore, there is no evidence to connect A1 and A2 to conclude that they were under constructive possession of drugs as alleged by the prosecution. However, even assuming that they were in possession of drugs by the prosecution, it does not come under commercial quantity. That apart, both A1 and A2 were abducted by the respondent and thereafter they were arrested.

11. It is also evident from the complaints lodged by the respective wives of the accused persons A1 and A2 before the jurisdictional Police Station. Therefore, the petitioners made out a prima facie case to satisfy the twin conditions of NDPS Act. That apart, considering the period of incarceration undergone by the petitioners, this Court is inclined to grant bail to the petitioners with certain conditions.

12. Accordingly, each of the petitioners shall deposit a sum of



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Rs.50,000/- (Rupees Fifty Thousand only) as non refundable deposit to the credit of COVID-19 SALEM DISTRICT; SB.A/c No : 190601000434; IFSC code: ICIC0006119; The Personal Assistant (General) to the Collector, Collectorate, Room No.117, First Floor, Salem-636 001, Ph.No. 9445008148. On such deposit, the petitioners are ordered to be released on bail on executing a separate bond for a sum of **Rs.10,000/- (Rupees ten thousand only)** with **two blood related sureties**, each for a like sum to the satisfaction of **learned Special Court under EC & NDPS Act, Chennai** and on further conditions that :-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioners shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) as non refundable deposit to the credit of COVID-19 SALEM DISTRICT; SB.A/c No : 190601000434; IFSC code : ICIC0006119; The Personal Assistant (General) to the Collector, Collectorate, Room No.117, First Floor, Salem-636 001, Ph.No.9445008148 and that the receipt of such deposit shall be produced before the concerned Magistrate at the time of executing the bond;



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[c] the petitioners shall report before the respondent police twice daily at 10.30 a.m., and 04.30.p.m., until further orders.

[d] the petitioners shall not abscond either during investigation or trial.

[e] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

02.09.2022

Anu

G.K.ILANTHIRAIYAN, J.



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Anu

To

1. The Special Court under EC & NDPS Act, Chennai.
2. The Inspector of Police,
H-5, New Washermenpet Police Station,
Waashermenpet,
Chennai-600 081.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court of Madras

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