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Crl.O.P.No.20475 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2022

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THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.20475 of 2022

Alzameer

... Petitioner

Vs.

The State represented by,
The Sub-Inspector of Police,
F1, Chindadripet Police Station,
Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail, in Crime No.199 of 2022, pending
investigation on the file of the respondent Police.

For Petitioner : Mr.V.Sambamurthy

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 04.08.2022 for the offences punishable under Sections 8(c), 22(b), 25, 29(1) of NDPS Act, in Crime No.199 of 2022 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 04.08.2022 at about 04.30 p.m., the Sub-Inspector of Police have received a secret information about selling of Nitrazepam Tablets IP, Nitravet-10 tablets by one Alzameer/Petitioner (A1) along with co-accused namely, Ajith(A2) in two wheelers. Then, the Sub-Inspector of Police along with the Police team went to the scene of occurrence i.e, Meyor Kabla Moorthy Salai, May Day Park, wherein, the said team informed the accused persons as per Section 50 of NDPS Act and during search, the accused were found in possession of 300 tablets and each stripe consisting of 30 tablets and out of it 30 tablets were taken for sample and stabled with cover and labelled and remaining 9 stripes totally 270 tablets each and seized case property viz.,20,000/- apple red colour cell phone, empty box and vehicle bearing Reg. No.TN-01-BM-8184



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NTORQ Black seized under the cover of seizure mahazar and arrested the accused and recorded their confession statement in the presence of witnesses. Thereafter, the accused persons brought to the respondent Police Station along with the seized materials. Hence the case.

3. The learned counsel appearing for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would further submit that the alleged offence is not at all committed by the petitioner. He would also submit that the respondent has not followed the entire procedure contemplated in NDPS Act and also submit that the tablets were not described as either Narcotic drugs or psychotropic substance or controlled drug. Hence, he prays for grant of bail to the petitioner.

4. The respondent has filed a detailed counter in this case and the relevant portion is extracted hereunder:

“5) I submit that during the course of investigation, I have examined witnesses and recorded their statements and sent the samples of 30 NITRAZEPAM TABLETS IP, NITRAVET-10 for chemical examination to the Forensic Science Department, Chennai and the same is yet to be



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obtained. The said drug is listed under serial No.221 of table under sec.2 of NDPS Act which categories 20 grams as small quantity and 500 grams as commercial quantity..

6]. I submit that in this case seized a total 600 each tablets measuring 10 mg, in the possession of accused 300 tablets each from A1, A2 respectively which comes under commercial quantity and thereby, Section 37 of NDPS is applicable in this case and the burden is on the accused to make out a case to satisfy the Court that there are reasonable grounds to believe that they are not guilty of such offence and it is therefore submitted that since it is a case of commercial quantity, the burden is on the accused to make out reasonable grounds for believing that they are not guilty of such offence. I submit that the recovery in respect of the petitioner A-1 is 300 tablets measuring 10 mg each totaling 3000 mg (3 grams) which is lesser than small quantity, two wheeler and tablet sold cash sum of Rs.20,000/- and tablet empty box-1 which is evident from the confession of A-1 that one Abishek [A-3] given tablets to the petitioner/accused's house through DTDC courier and after that he sold it various places viz., Triplicane, Ice house, Egmore and Chindaripet. It is submitted that 30.07.2022 a parcel containing the above mentioned tablets was sent to the petitioner by shipment in DTDC courier from Agra by one Abishek [A-3] He could further submit that the admissibility and evidentiary value of the confession recorded under Sec 67 of NDPS Act, can be decided only at the stage of trial and not at the stage of bail.



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7] I further submit that as per sec 54 of NDPS Act and unless and until contrary is proved, it may be presumed that the accused have committed the offence. Further submitted that in the light of the object of section 37 of the NDPS Act that in addition to the limitations provided under the Cr.P.C., or any other law for the time being in force, regulating the grant of bail. The Court cannot take liberal approach in the matter of bail under the NDPS act and particularly when the seizure is of commercial quantity"

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the petitioner is running medical store and he has been selling drugs without any prescription. He would also submit that the recovered quantities from the accused are commercial quantity. Hence, he vehemently opposed to grant bail to the petitioner.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and perused the materials available on record including the documents in the typed set of papers furnished by the petitioner.



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7. Taking into consideration the facts and circumstances of the case, the submissions made by the learned counsel, this Court is inclined to grant bail to the petitioner.

8. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.25,000/- (Rupees Twenty Five thousand only)** with **two sureties**, each for a like sum to the satisfaction of the **learned Principal Special Court (NDPS Cases) 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 petitioner shall report before the respondent police daily at 10.30 a.m., and 05.30 p.m., until further orders;

[c] the petitioner shall not abscond either during investigation or trial;

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial;



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[e] On breach of any of the aforesaid conditions, the learned 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 abscond, a fresh FIR can be registered under Section 229A IPC.

15.09.2022

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To

1. The Principal Special Court (NDPS Cases),
Chennai.
2. The Sub-Inspector of Police,
F1, Chindadripet Police Station,
Chennai.
3. The Central Prison,
Puzhal.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA., J.

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