



Crl.O.P.No.20606 of 2022

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2022

CORAM

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

Crl.O.P.No.20606 of 2022

1. Santhoshkumar

2. T.Yuvaraj

... Petitioner

Vs.

State represented by,
The Inspector of Police,
Anthiyur Police Station,
Erode District.
Crime No.262 of 2022

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleased to grant bail to the petitioners in Crime No.262 of 2022 pending
investigation on the file of the respondent police.

For Petitioners : Mr.J.Ranjithkumar

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



CrI.O.P.No.20606 of 2022

WEB COPY

ORDER

The petitioners, who were arrested and remanded to judicial custody on 07.08.2022 for the offence punishable under Section 328 of IPC in Crime No.262 of 2022 on the file of respondent police, seek bail.

2. The case of the prosecution is that on 07.08.2022 at about 14.30 hours, on receiving the secret information, the Investigation Officer and his team went to the place of occurrence and found the petitioners and the other accused were using the drugs orally and by way of injecting and immediately the accused were arrested and their confession statement has also been recorded. Based on the confession statement of the accused, the respondent has seized 100 mg of Tapentadol tablet (1 strip contains 10 tablets), 6 numbers of needle and one syringe from the first petitioner/A1 and 300 mg of Tapentadol tablet (3 strip contains 30 tablets), 6 numbers of needle and four syringe from the second petitioner/A3 and based on which, a case has been registered in Crime No.262 of 2022 for the offence under Section 328 of IPC on the same day. Hence, the case.



Crl.O.P.No.20606 of 2022

WEB COPY

3. Learned counsel for the petitioners would submit that the petitioners are innocent and they have been falsely implicated in this case. He would further submit that the Tapentadol tablets seized by the respondent is not the narcotic substance and he would also submit that there is no bad antecedents against the petitioners and hence, he seek to enlarge the petitioners on bail.

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

"6) I submit that during the course of investigation, I have sent the requisition letter regarding the above case in order to obtain legal opinion for section alteration belongs to the NDPS Act to the Additional Director of Prosecution, Erode District on 09.09.2022 and he had opined as follows,

"Moreover, the tablets Tapentadol is not a NARCO SUBSTANCE in order to invoke the provisions of NDPS Act in the event of any violations. The tablet Tapentadol is not brought under the NDPS Act in as much as it is not notified in the Schedule. Therefore it is not desirable to take action, against the accused under any of the penal provision of the NDPS Act. Bringing



Crl.O.P.No.20606 of 2022

the accused under the purview of NDPS Act, the present situation is not warranted. The accused can only be dealt with u/s.328 IPC and not under NDPS Act. The NDPS Act is exclusively intended for the drugs notified in the Schedule of the Act. The medicine Tapentadol does not come under any category in the NDPS Act. There I am of the considered opinion that the action u/s. 328 IPC would be sufficient to meet ends of justice."

7) I submit that in view of the above opinion there is no necessity to alter the offences under NDPS Act, since Tapentadol is not covered under the schedule to section 2 of NDPS Act."

5. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that the petitioners are arrayed as A1 and A3 in this case and the respondent Police has recovered 100 mg of Tapentadol tablet (1 strip contains 10 tablets), 6 numbers of needle and one syringe from the first petitioner/A1 and 300 mg of Tapentadol tablet (3 strip contains 30 tablets), 6 numbers of needle and four syringe from the second petitioner/A3. Hence, he vehemently opposed to grant bail to the petitioners.



Crl.O.P.No.20606 of 2022

WEB COPY

6. Taking into consideration of the facts and circumstances of the case, the submissions made by the learned counsel and also considering the period of incarceration suffered by the petitioners from 07.08.2022, this Court is inclined to grant bail to the petitioners with certain conditions.

7. Accordingly, the petitioners are ordered to be released on bail on their executing a separate bond for a sum of **Rs.25,000/- (Rupees Twenty Five thousand only) each** with **two sureties** (out of which, one surety should be either father or mother of the petitioners and should produce document to show his/her means), each for a like sum to the satisfaction of the **learned Judicial Magistrate-II, Bhavani** 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 stay at Periyakulam and report before the Inspector of Police, Periyakulam Town Police Station, every day at 10.30 a.m., and 5.30pm., until further orders;

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



WEB COPY



CrI.O.P.No.20606 of 2022

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

[e] 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]**;

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

20.09.2022

ham

To

1. The Judicial Magistrate-II,
Bhavani.
2. The Inspector of Police,
Anthiyur Police Station,
Erode District.
3. The Sub Jail,
Bhavani.
4. The Inspector of Police,
Periyakulam Town Police Station.
5. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.20606 of 2022

A.D.JAGADISH CHANDIRA,J.

ham

Crl.O.P.No.20606 of 2022

20.09.2022