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Crl.OP.No.21870 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

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

Crl.OP.No.21870 of 2022

A.Sivakumar

... Petitioner

Vs.

State by Inspector of Police,
G-7, Chetpet Police Station,
Chennai.
(Crime No.305 of 2021).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail pending trial in CC.No.97 of 2022
on the file of the learned I Additional Special Judge for NDPS and EC Act
Cases, Chennai.

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

ORDER

The petitioner, who was arrested and remanded to judicial custody
on 20.09.2021 for the offences punishable under Sections 8(c), 22(c), 25
and 29(1) of the NDPS Act in Cr.No.305 of 2021 on the file of the
respondent Police, seeks bail.



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2. The case of the prosecution as per the defacto complainant is that on receipt of secret information about transportation of drugs, the respondent police had intercepted the Ford Eco Sport Car bearing Regn.No.TN-18-AP-6768 at the junction of Namasivayapuram Bridge and Muthiyappan Street, which was driven by the petitioner/A1 along with the second accused Ahamed at about 10.00 hours on 20.9.2021 and on search, the respondent police found that the petitioner and other accused have illegally transported 550 grams of Methamphetamine, which is a commercial quantity and hence, the respondent, after completion of investigation, filed a final report and the case has been taken up for trial in CC.No.97 of 2022 on the file of the I Additional Special Judge for NDPS and EC Act Cases, Chennai. Hence, the complaint.

3. Learned counsel for the petitioner, while admitting that Section 37 of NPDS Act operates as a bar against grant of bail on merits of the case as the contraband alleged to have been recovered from the petitioner is stated to be of commercial quantity, would submit that the petitioner is seeking bail only on medical/health grounds. He would point out that though there is a bar/restriction laid under Section 37 of NDPS Act for grant bail in the event of non-compliance of the twin conditions therein, it only limits the powers of



the Court with regard to its jurisdiction to grant bail and it does not completely curtail the powers conferred upon the High Court under Section 439 of Cr.P.C. He would submit that Section 37 of the NDPS Act would come into play only when the bail petition of a person involved in possession of commercial quantity of contraband is considered on merits, but, such limitation would not come into play when the bail has to be granted on humanitarian grounds like medical grounds and in such circumstances, the powers of the High Court under Section 439 of Cr.P.C are not curtailed. He would also submit that the earlier application filed in Crl.OP.No.1220 of 2022 was dismissed as withdrawn on 10.06.2022 and the petitioner has been in prison for more than 11 months.

4. By producing the latest photographs of the petitioner evidencing the pathetic condition of the petitioner, the learned counsel would submit that the petitioner, who is aged about 50 years and the sole bread winner of his family, has been suffering from various diseases including Diabetes at its peak and since his right foot was completely deteriorating day by day, the right leg was amputated upto knee level and still he requires proper medical treatment and care and thereby crave indulgence of this court for releasing him on bail. He would also submit that he has not filed application for the



second accused. He further submit that the case stands posted for trial on 14.11.2022 for furnishing copies before the learned I Additional Special Court for NDPS Cases, Chennai. He would further submit that the petitioner is ready to cooperate for the speedy trial of the case and he would file an undertaking that he would not hamper or drag on the trial by unnecessarily taking adjournments or by delaying the cross examination of witnesses.

5. By bringing to the notice of the court that various High Courts have held that Section 37 of the NPDS Act is not an absolute bar when the bail petition is concerned on humanitarian/medical grounds, the learned counsel for the petitioner prays for grant of bail to the petitioner.

6. The respondent has filed a detailed counter. Paragraph No.13 of the same is extracted here under for ready reference:-

“It is submitted that the petitioner is seeking bail only on the ground of his ill health as he is suffering from Type II Diabetes Mellitus and coronary artery disease and has a past history of below knee amputation of right leg 6 months ago. The health condition of the petitioner is evident from the medical report issued by the Assistant Professor, Intensive



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Medical Care Unit (ECRP-II), Government Stanley Hospital.

The petitioner was admitted as in-patient on 05.09.2022 at

Department of General Medicine, Government Stanley

Medical College and he is undergoing treatment as on date”.

7. Learned Government Advocate (Crl. Side) would submit that the petitioner, along with the other accused, was found in possession of commercial quantity of 550 grams of Methamphetamine. While pointing out that there is a specific bar under Section 37 of NDPS Act for grant of bail to the petitioner, who is accused of offences involving commercial quantity of contraband, he would fairly submit that the condition of the petitioner is very serious and his right leg below the knee has been amputated and the health condition of the petitioner is further deteriorating day by day.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. When the matter was taken up for hearing on 10.10.2022, this court, having perused the photographs of the petitioner which disclose his health condition and having been apprised of the fact that the petitioner was admitted in Government Stanley Hospital, Chennai, called for a Report from



the Dean of Government Stanley Medical College and Hospital, Chennai
with regard to the health condition of the petitioner.

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10. The Report issued by the Professor and Head of Department of General Medicine, Government Stanley Medical College & Hospital is reproduced hereunder:-

“ Mr.A Siva Kumar, 50 years of old male, a known case of Type II Diabetes Mellitus for the past 20 years, was admitted with complaints of fever, cough with expectoration and left sided chest discomfort for 7 days with an episode of hemoptysis and evaluated for the same by a team of Doctors consisting of Physician, Diabetologist, Cardiothoracic Surgeon, Cardiologist, Chest Physician and Physiotherapist.

Patient is known case of Diabetes Mellits for the past 20 years on Oral and anti diabetic drugs and recently (six months back) below knee amputation was done on the right side in a private facility.

On admission Patient was conscious and oriented, afebrile and Local examination revealed decreased breath sounds in the Left hemi thorax with no added sounds. On



admission Patient Vitals: Pulse: 80/min and regular, Blood Pressure:120/70 mmhg, Saturation was 96% in room air:CT chest showed Left sided Hydropneumothorax, patient was transferred to intensive respiratory Care unit and Intercostal tube drainage procedure was done by cardio-thoracic surgeon.

Diabetologist opinion was obtained and patient managed accordingly with regular Insulin and monitoring of blood sugar.

Cardiologist opinion was obtained and patient managed accordingly with regular Insulin and monitoring of blood sugar.

Cardiologist opinion was obtained and Echocardiogram was done, which showed Mild hypokinesia of the anterior wall of Left Ventricle with EF of 56% and adequate LV function with features suggestive of Coronary Artery disease. Patient was advised to start on Anti platelets (after ICD removal), Statins, Insulin and Cardio supportive drugs.



Sputum examination was positive for Mycobacterium. Tuberculosis and was started on Anti-tuberculous drugs by Chest Physician.

Patient is being treated with Insulin and Anti tuberculos drugs, Antibiotics, Statins cardio protective drugs, chest physiotherapy and supportive care. Patient was periodically reviewed by Cardiothoracic Surgeon.

The Cardiothoracic Surgeon reviewed on 20.10.2022 and advised to clamp the ICD tube and observe the patients for 12 hours followed by conversion to Uro bag if no further drain. Continue active chest physiotherapy and spirometry.

Condition at Present.

Patient conscious, continuous to be critical and under close monitoring.

Blood Sugars under Control.

Left ICD tube in place since the lung has not expanded. Hence needs hospitalization until the left lung expands adequately.

Sputum +ve Tuberculosis patient hence needs to be under isolation and treatment since he could be a source of infection.

Plan: *To continue Anti-tuberculous drugs, ICD Care and*



Chest Physiotherapy and supportive care till adequate lung expansion."

11. Considering the health condition of the petitioner viz., the amputation suffered by him as evidenced from the photographs produced and the Report of the Dean with regard to the ailments of the petitioner, this Court is inclined to grant bail to the petitioner.

12. 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, out of whom, one surety shall be the blood related surety**, for a like sum to the satisfaction of **learned Principal Special Judge for NDPS and EC Act 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 Trial Court on the hearing days at 10.30 a.m. In the event of the petitioner's inability to appear on account of ill health, he shall be represented by his counsel and necessary Application under Section 317 Cr.P.C. shall



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be filed.

[c] the petitioner shall file an Affidavit of Undertaking that he would not hamper or drag on the trial by unnecessarily taking adjournments or by delaying the cross examination of witnesses on account of his absence in court during trial. The counsel shall cross-examine the witnesses without delay.

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

[e] the petitioner 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 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]*;

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

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Vv/ssk.



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1. I Additional Special Judge
for NDPS and EC Act Cases,
Chennai.

2. Inspector of Police,
G-7, Chetpet Police Station,
Chennai.

3. The Superintendent,
Central Prison, Pushal, Chennai.

4. The Public Prosecutor,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

Vv/ssk.

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