



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Cr1.O.P.No.25511 of 2021

Kavi kumar Paramasivam

... Petitioner

Vs.

State rep by
The Superintendent,
RSI - AIR Customs,
Chennai.

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail pending trial in C.C.No.76 of 2021 on the file of the Hon'ble 1st Additional Special Judge NDPS Act, Chennai.

For Petitioner : Mr.Ma.Gowthaman
For Mr.R.Krishna kumar

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor (Customs)

ORDER

The petitioner who was arrested and remanded to judicial custody on 24.06.2020 for the offences under Sections 8(c) read with 22(c), 23, 28 and 29 of NDPS Act in C.C.No.76 of 2021 on the file of the Hon'ble 1st Additional Special Judge -NDPS Act, Chennai, seeks bail.

2. This is the third bail application was filed by the petitioner. The case of the prosecution is that on 18.06.2020, the customs officers at about 2 P.M., found one foreign goods in the Airport Parcel Office, Meenambakkam Chennai and the said parcel consignment bearing tracking No. RC 592124705DE arrived from Germany and the said parcel was found to be addressed to the petitioner and upon opening the parcel it was found to contain 95 yellow cover and 5 light pink colour MDMA tablets and found to weigh 49 grams in total, based on which this present case has been registered.



3.The learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. He further submitted that the entire allegation is false and concocted one. He further submitted that the said contraband was neither seized from his possession nor his residence and there is no legal material to connect him with the alleged offence and the investigation has been completed. Further, the respondent police had filed a defective charge sheet against the petitioner on 17.03.2021 in SR/No.958 of 2021 and the same was taken on cognizance and numbered as C.C.No.76 of 2021 before the 1st Additional Special Judge-NDPS Act, Chennai. He further submitted that there is no previous case pending against the petitioner. Hence, he prays for grant of bail to the petitioner.

4.The learned Special Public Prosecutor (Customs) submitted that in pursuance of the Mahazar proceedings the summon was issued to the petitioner herein and in response to the summon, the petitioner appeared and given his voluntary statement inter alia that he is currently working in Bangalore. He further submitted that his friend Yashpal requested him for deliver of parcel in his name and he agreed for the same but, he failed to give Yashpal's address and he has to receive the parcel and to deliver the same to the person sent by Yashpal. Further, he stated that he used to procure the Narcotic Drugs from Bangalore. Further, he stated that he knows the MDMA tablets are prohibited under NDPS Act and he further stated that he used to consume Cannabis and Cocaine and procure them in Bangalore Itself.

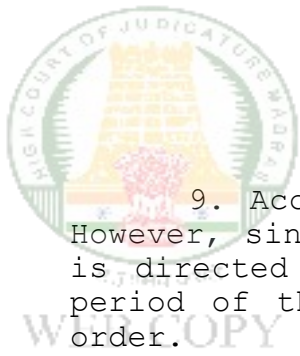
5. During the course of investigation, it reveals that on scrutiny and from the confessional voluntary statement of the petitioner, he has been indulged in the trafficking of MDMA for a long time as evidence from his statement dated 24.06.2020. It also appears that the petitioner created a fictitious character by name Yashpal, hence, he failed to give Yashpal's address also. Furthermore, even though he is residing in Bangalore, he imported the parcel to his Erode address, from this it is very clear that the parcel is meant for him only and he has entered into a criminal conspiracy in Chennai, to import MDMA tablets which is in commercial quantity, a Narcotic substance under the NDPS Act 1985 as amended which came to be seized on 18.06.2020 at Foreign post office, Meenambakkam, Chennai and thereby he has contravened the provisions of Section 8(c) r/w sec 22(c), 23, 28 & 29 of the NDPS Act 1985, as amended and are punishable under the same act, hence he was arrested and remanded. Subsequently the samples were sent to the Lab for testing and the same were tested and confirmed that they are MDMA tablets vide Lab Test Report No.ChL-CHN/NDPS/1913 & 1914/19.06.2020 dated 29.06.2020.



6. The learned Special Public Prosecutor (customs) further submitted that the petitioner also involved in as case booked by NCB, Bangalore Zonal Unit in NCB F.No.48/1/08/2020/BZU. He further submitted that the petitioner is regularly receiving the contraband from the foreign nations for use and sale and the same is admitted in his voluntary statement dated 24.06.2020 and hence the accused herein is habitual offender in drug trafficking and he is liable to be punished under the NDPS Act. He further submitted that the investigation has been completed and the charge sheet has also been filed in C.C.No.76 of 2021 before the 1st Additional Judge, NDPS Court, Chennai. He further submitted that the petitioner is knowing fully well that the MDMA drugs are prohibited under NDPS Act that too it is a commercial quantity and thus the petitioner is not entitled for bail as per Sec 37 of NDPS Act which clearly states that the petitioner has to satisfy the court that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. As per the judgments reported in 2018 (13) SCC Pg.813 order could not be passed by High Court under Section 438 of Cr.P.C without reference to sec 37 and without entering a finding on the required level of satisfaction. Furthermore, as per the judgment reported in 2020 (0) Supreme (SC) Pg 69 Recording of satisfaction that the accused is not guilty, mandatory- Since quo non for granting bail is mandatory. He further submitted that the contraband involved in this case 49 gms of MDMA tablets is a commercial quantity. He further submitted that if the petitioner is let out on bail, again he will commit the similar type of offence and there is possibility to escape from the clutches of law and tamper with the evidence as well as threaten the witnesses. Hence, he vehemently opposed for grant of bail to the petitioner.

7. In reply, the learned counsel for the petitioner further submitted that the quantity involved is not commercial quantity. Further, he undertakes that the petitioner will co-operate with the trial.

8. On perusal of FIR, it is seen that the petitioner had attempted to smuggle 49 grams of yellow colour tablets believed to be MDMA which is commercial in quantity. The petitioner is also failed to show any single ground to satisfy the condition as contemplated under Section 37 of NDPS Act. Moreover he also used to consume cannabis and he failed to give address of Yashpal alleged to be his friend. Further, the petitioner is involved in very serious offence, this Court is not inclined to grant bail to the petitioner.



9. Accordingly, this Criminal Original Petition is dismissed. However, since the petitioner is in Judicial custody, the trial Court is directed to complete the trial in C.C.No.76 of 2021 within a period of three months from the date of receipt of a copy of this order.

-sd/-

01/04/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE 1ST ADDITIONAL SPECIAL JUDGE
NDPS ACT, CHENNAI.

2 THE SUPERINTENDENT,
RSI-AIR CUSTOMS, CHENNAI.

3 THE SUPERINTENDENT
CENTRAL PRISON, PUZHAL.

4 THE SPECIAL PUBLIC PROSECUTOR (CUSTOMS)
HIGH COURT, MADRAS.

+1CC to M/S.R.KRISHNA KUMAR Advocate on payment of necessary charges SR.No.5025

CRL OP.25511/2021

Date :01/04/2022

CSK 06/04/2022