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Crl.O.P.No.23360 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2022

Date of Verdict : 23.12.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.23360 of 2022

Sachin @ Sachin Yadav,
S/o.Jaipal,
Residing at Gaon Tala Kuam,
Manesar, IMT Manesar.
Gurgaon,
Haryana – 122 051.

... Petitioner/Accused 7

(Currently Incarcerated at Puzhal Prison)

Vs.

State of Tamil Nadu,
Represented by,
The Inspector of Police,
R-2, Kodambakkam Police Station,
Chennai.

... Respondent/Complainant

(Ref.Crime No.81/2022 dated 17/03/2022)

(Cause title as found in the order of Learned Principal Special Court under EC&NDPS Act)

Prayer :- This Criminal Original Petition is filed under Section 439 of Cr.P.C., 1973, pleaded to enlarge the petitioner on bail in Crime No.81/2022 on the file of the Inspector of Police, R-2 Kodambakkam Police Station, Chennai.

For Petitioner : Mr.H.Manivannan

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor.



ORDER

This Criminal Original Petition is filed to enlarge the petitioner on bail in Crime No.81/2022 on the file of the Inspector of Police, R-2 Kodambakkam Police Station, Chennai, for offences under Sections 8 (c), 22(a), 22(c), 29(1) of Narcotic Drugs and Psychotropic Substances Act and under Sections 465, 468 and 472 of I.P.C.

2. The case of the prosecution in Crl.O.P.Nos.18440, 19025, 19374 and 20553 of 2022 is that on 17.03.2022, the respondent Police received a secret information that near Trustpuram Playground, the accused persons A5 and A6 are selling drug tablets. On receipt of the same, a team of Police went to the place of occurrence and apprehended A5 and A6. On enquiry, they informed their address and after following the procedure as contemplated under Section 50 of NDPS Act, seized the contrabands viz, Nitroxit-10 mg, Alprax tablets, Unwanted Kit and Tydol tablets from A5 and A6.

3. On the confession statement of the 6th accused that he used to purchase the Tablets from 2nd accused at Kothavalchavadi. In turn, 2nd accused used to purchase the Tablets from the 1st accused. 1st accused in turn used to purchase the drugs from 3rd accused. Thereafter, 5th & 6th accused were arrested



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and remanded to judicial custody. On their confession, A2 to A4 were arrested

and they were in possession of 4620 Tablets of Nitravit-10 mg, 2220 Tablets of Tydal-100 mg, 145 Tablets of Unwanted kit 10 mg and 130 Tablets of Alprasafe 0.5 mg were seized from them. As per confession of the 1st accused, he along with other accused were running the You Tube Channel in the name of “*Lifemed*”. Through the said You Tube Channel, they were getting enquiries for the above referred drugs and sold them through online. They started a fake Pharma Company in the name of Poonkundran namely, “VOIZMED PHARMA (P) LTD” under the said name and seal, they used to purchase and sale of drugs. The 1st accused had purchased the Tablets through Indiamart Online from the 7th accused namely the petitioner herein in the name and style of “Sriram Medicos. Those Narcotic drugs were purchased on MRP rates. On her confession, the petitioner was arrested and remanded to judicial custody on 29.03.2022.

4. After completion of investigation, the respondent police filed final report for offences under Section 8 (c), 22(a), 22(c), 29(1) of NDPS Act and under Section 465, 468 and 472 of I.P.C. As per the charge sheet, the petitioner is arrayed as 1st accused.



5. The Learned Counsel for the petitioner would submit that 1st

accused in the charge sheet and the respondents made search of the petitioner's medical shop as well as his residence. Even according to the prosecution, nothing was recovered from the petitioner, except his degree certificate of D.Pharm, Medical Shop license and his mobile phone. No drugs were seized from the petitioner's medical shop or his residence. He possessed license under Form No.20 and Form No.21 of Drugs and Cosmetics Act and he was running the Medical shop in the name and style of "Sriram Medicos" situated at Gurgaon. He sells the drugs authorized by the licence under the Drugs and Cosmetics Act at MRP rates directly as well as through online. He is also authorized to sell the drugs involved in the above case, namely, Nitrovit 10 mg, Tydal 100 mg, Unwanted Kit-10 mg and Alprasaft 5 mg under the license possessed by them in Form No.21 of Drugs and Cosmetic Act. He is authorized to sell those drugs, except the drugs mentioned in Schedule "X". None of the drugs mentioned by the prosecution falls under Schedule "X" of the Drugs and Cosmetic Act. Only, as per the confession statements of the co-accused, he was arrested and remanded to judicial custody, except the confession statement, no other link between them to connect the petitioner. He has been implicated as an accused solely on the basis of confession statement of the co-accused and such



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implication is not authorized under law. Though, the prosecution produced some courier receipts, it doesn't mean that under the said courier, the petitioner had sent only those drugs to the other accused persons. Even according to the case of the prosecution, the other accused persons fictitiously created the Pharma as "VOIZMED PHARMA (P) Ltd" and the petitioner is no way connected with the said company and there is no link to connect the petitioner to the said company. Though the prosecution alleged that the petitioner supplied drugs below the rate of MRP price, the prosecution failed to produce any iota of evidence of that effect. Now, the investigation is completed and filed final report. On seeing the final report, no evidence produced by the prosecution to connect the petitioner, except the confession statements recorded under Section 67 of NDPS Act. The petitioner mainly relied upon that the confession statement recorded under Section 67 of NDPS Act is inadmissible in evidence and as such, on the basis of the confession statement, the petitioner cannot be implicated as an accused and he cannot be convicted solely on the basis of the confession statement of the co-accused.

6. In support of his contention, the learned counsel appearing for the petitioner relied upon various judgments :-



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i). *Tofan Singh -vs- State of Tamil Nadu* reported in (2021) 4 SCC 1.

ii). *State by (NCB) Bengaluru -vs- Pallulabid Ahmad Arimutta* reported in 2022 (1) Crime 240 (SC).

iii). *Rashid -vs- State of Punjab* Law Finder Doc ID #2007737.

iv). *Hardeep Singh @ Happy -vs- State of Punjab* dated 30th September 2022.

7. Per contra, Mr.A.Damodaran, Learned Additional Public Prosecutor for the respondent filed counter and submitted that all the accused persons were under conscious and constructive possession of the contraband which is no more than the commercial quantity. Though the petitioner has been implicated on the confession statement of the co-accused, they are material to connect the petitioner in this case. Unless, the petitioner prove any contrary, it may be presumed that the accused have committed the offence as contemplated under Section 54 of NDPS Act. There is a bar under Section 37 of NDPS Act and as such, this Court repeatedly dismissed the petition filed by the petitioner seeking bail. In fact, the petitioner had taken very same ground in the present application for bail, which was already decided against the petitioner by this Court. Now, all the youngsters are spoiling their health by administering these



drugs directly in the blood vein by adding with some glucose. If, they had these drugs, they fainted for 2 or 3 days. If the same person have taken another dose, their life itself gets danger.

8. As far as the petitioner is concerned, he is a wholesaler and he is supplying these drugs all over the India through online and also by courier on placement of orders. Though, the confession statement is inadmissible in evidence, it cannot be considered while considering the bail application.

9. In support of his confession, the Learned Counsel for the respondent relied upon the judgment passed in Criminal Appeal Nos.1001 to 1002 of 2022, dated 19.07.2022, in which, the Hon'ble Supreme Court of India has held that, apart from the statement under Section 67 of NDPS Act, other psychotropic substances in the form of tablets, injections and syrups were seized from the accused and as such, the statement under Section 67 of NDPS Act can be used for corroboration. Hence, the parameters of bail available under Section 37 of NDPS Act have not been satisfied and dismiss the bail application.

10. Further, the Learned Additional Public Prosecutor for the



respondent also relied upon the judgment reported in **2020 SCC Online HP**

3297 (Karamvir -vs- Narcotic Control Bureau Chandigarh), the High Court of

Himachal Pradesh held that, after recording of the confession statement, there was recovery from the accused and as such, it is not a case where the petitioner has been involved only on the basis of voluntary statement recorded under Section 67 of NDPS Act or only on the basis of disclosure statement made by the co-accused. Therefore, the plea of the petitioner is not sustainable.

11. Heard the Mr.H.Manivannan, Learned Counsel for the petitioner and Mr.A.Damodaran, Learned Additional Public Prosecutor for the respondent. Records perused.

12. On perusal of the record reveals that though the petitioner was arrayed as 7th accused in the F.I.R, after completion of investigation, now he has been arrayed as 1st accused as per the charge sheet. Even according to the case of the prosecution, there are totally seven accused, in which the petitioner is arrayed as 1st accused. Further, the case of the prosecution is that, he is running a Medical company called “M/s.Sriram Medicos” at Haryana. He is the main supplier and used to supply all over the India in his name and style of



“M/s.Sriram Medicos” and also supplied the contraband to the A2 to A5. The drug was purchased from Bhagirath Palace at Delhi through DTDC courier, in the name of “VOIZMED PHARMA (P) Ltd”. The 2nd accused purchased the contraband from the 1st accused through Indiamart Online Company. The 1st accused used to deliver the contraband through courier. On the confession statement recorded from the co-accused, the respondent went to the premises of the petitioner and his medical shop. They seized his cellphone, degree certificate and the license of his medical shop. Except these, no other contraband was seized from the petitioner. The documents which were served to the accused persons under Section 207 of Cr.P.C., do not contain any material to connect the petitioner with other accused persons, except the statements recorded under Section 67 of NDPS Act.

13. The only ground raised by the petitioner is that, he cannot be implicated as an accused, only on the basis of the confession statement recorded under Section 67 of NDPS Act, since there was no recovery from the petitioner except his mobile phone, degree certificate and medical shop license.

14. The Learned Counsel for the petitioner mainly rely upon the



judgment of the Hon'ble Supreme Court of India in ***Tofan Singh -vs- State of Tamil Nadu*** reported in ***(2021) 4 SCC 1***, in which the Hon'ble Supreme Court has held that the statement recorded under Section 67 of NDPS Act cannot be used as confession statement in the trial of an offence under NDPS cases. Though this ground cannot be used while considering the application for bail, in pursuant to the statement, if no recovery and if no evidence to connect the accused as per the statement, it can be considered even for granting bail.

15. On perusal of records and the statement of the co-accused revealed that except the statements of the co-accused recorded under Section 67 of NDPS Act, no substantial material is available with the prosecution to connect the petitioner with the allegations levelled against him of indulging in drugs trafficking. The petitioner has been implicated as an accused only on the basis of the statement of the co-accused, which has no evidentiary value in the absence of any recovery in terms of the judgment of the Hon'ble Supreme Court of India passed in case of ***Tofan Singh -vs- State of Tamil Nadu*** reported in ***2020 AIR (SC) 5592***, ***RakeshKumar Singla -vs- Union of India*** reported in ***2021 (1) RCR (Criminal) 704***, ***Surinder Kumar Khanna -vs- Intelligence Officer Directorate of Revenue Intelligence*** reported in ***2018 (3) RCR (Criminal) 954***, ***State by (NCB) Bengaluru -vs- Pallulabid Ahmad Arimutta and Another***



reported in 2022 (1) RCR (Criminal) 762 and Sanjeev Chandra Agarwal and

Another -vs- Union of Indian reported in 2021 (4) RCR (Criminal) 590. Thus,

it is made clear that the confession statement of an accused made by in custody has no evidentiary value. Further, in the absence of any recovery or any other material to connect the petitioner with the co-accused, their co-accused statements have no evidentiary value. That apart, the petitioner never been added as an accused in any other case under the NDPS Act, so far, except in the present case.

16. Perusal of the provision under Section 37 of NDPS Act reveals that twin conditions are to be satisfied cumulatively before an accused was granted bail. (i). the accused he is not guilty of the offence and that he will not likely to commit any offence while on bail. (ii). Reasonable ground for belief of the Court could be recorded that the accused had not committed any offence, if they are violation of the mandatory provisions of the Act. Similarly, the evidence against the accused is scanned or inadmissible. Once again, a *prima facie* satisfaction of the Court could be recorded that the accused had not committed an offence.



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17. Therefore, after filing the charge sheet, there is change in circumstances to consider this petitioner for bail. On perusal of documents which were furnished under Section 207 of Cr.P.C and new documents filed before this Court are not satisfied the connectivity of the petitioner with other accused persons. Since, the petitioner never involved in any other case, this Court can predict that he will not likely to commit such an offence in future. Therefore, the petitioner made out a *prima facie* case to satisfy the twin conditions as contemplated under Section 37 of NDPS Act.

18. Considering the above facts and circumstances of the case and also the period of incarceration from the date of his arrest i.e., 31.03.2022, this Court is inclined to grant bail to the petitioner. Accordingly, **the petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of the RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600034; Ph No.8939065431**, and on such deposit the petitioner is ordered to be released on bail on his executing a 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 the Principal Special Court under EC & NDPS, Chennai,



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and on further conditions that :-

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[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 deposit a sum of **Rs.50,000/- (Rupees Fifty Thousand only)** to the credit of the **RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600034; Ph No.8939065431**, and that the receipt of such payment shall be produced before the concerned Magistrate at the time of executing the bond;

[c] the petitioner shall report before the Trial Court in **C.C.No.81 of 2022 daily at 10.30 a.m. and 5.00 p.m., until further orders.**

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

[e] the petitioner shall not tamper with evidence



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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 absconds, a fresh FIR can be registered under Section 229A IPC.

23.12.2022

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

bsm

To

1. The Principal Special Court (EC & NDPS case) Court, Chennai.
2. The Inspector of Police, R-2, Kodambakkam Police Station, Chennai.
3. The Superintendent of Prison, Puzhal Prison, Chennai.
4. The Public Prosecutor, High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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Pre delivery order made in
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