



Crl.OP.No.27362 of 2022

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G.K.ILANTHIRAIYAN, J.

At the instance of the learned counsel for the petitioner, today this matter has been posted under the caption “for being mentioned”.

2. The learned counsel for the petitioner would submit that while disposing of the petition in Crl.OP.No.27362 of 2022 dated 22.11.2022 by this Court, due to inadvertence, crime number has been wrongly mentioned in the prayer portion. Hence, he requested to issue a fresh order copy after correcting the same.

3. Heard, the learned counsel for the petitioner.

4. In view of the submissions of the learned counsel for the petitioner, it is ordered that the prayer portion in the first page of the order passed in Crl.OP.No.27362 of 2022 dated 22.11.2022 shall read as follows:



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WEB COPY *“Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail pending trial in CC.No.322 of 2021 on the file of the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act at Chennai in respect of crime No.2362 of 2021 on the file of the respondent / police.”*

' instead of '

“Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail pending trial in CC.No.322 of 2021 on the file of the in crime No.74 of 2022 pending investigation on the file of the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act at Chennai.”

5. It is also ordered that in the cause title, prayer portion and first paragraph of the order, “**crime No.2362 of 2022**” shall read as “**2362 of 2021**”.



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6. Accordingly, the Registry is directed to issue a fresh order copy in

Crl.OP.No.27362 of 2022 dated 22.11.2022 after making necessary corrections.

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02.12.2022



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G.K.ILANTHIRAIYAN, J.

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02.12.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.OP.No.27362 of 2022

Musharaf @ Muhammed Aslam

..Petitioner/A2

Vs.

State, Rep. by
Inspector of Police,
H-1, Washermenpet Police Station,
Chennai 600 021
crime No.2362 of 2022

..Respondent

PRAYER:

Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail pending trial in CC.No.322 of 2021 on the file of the in crime No.74 of 2022 pending investigation on the file of the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act at Chennai.

For Petitioner : Mr.S.Apunu

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



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 30.07.2021 for the offences punishable under Sections 8(c), 20(b),(II),(B), 25, 29(1) of NDPS Act, 1985 in crime No.2362 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 28.07.2021 at about 9.30 hrs., on receiving secret information that three unknown persons were selling drugs tablets and as such, after getting permission from the superior officer, the respondent along with his team went to the scene of crime and found three unknown persons who were standing in their respective bikes and tablets. After seeing them, they were about to escape and they were caught hold by the respondent with his team. On enquiry, search was made and found that they were in possession of nitroxit 10 mg - 300 tablets per 30 boxes, totally 9000 tablets kept in black colour bag. Thereafter, the respondent had taken samples of 60 tablets and remaining tablets kept in the presence of police witnesses. Hence, the complaint.



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2.1 As per the confession statement of A1, he had handed over 1200 tables of nitravit 10 mg to the second accused for selling. On the said confession, the second accused i.e. the petitioner herein was arrested and seized nitravit 10 mg 1200 tables at Wall Tax Road near Kulanthai Street, Rail Guest House Lodge on 30.07.2021. The respondent also seized tydol tablets 30 nos., OCB slim unbleached virgin paper plastic box 19 strips and Honour mobile phone.

3.The learned counsel appearing for the petitioner would submit that a false case has been put up as against the petitioner. The first accused was arrested on 28.07.2021, whereas the petitioner was arrested only on 30.07.2021, that too on confession statement of A1. It is purely a put up case since the petitioner is no way connected with the occurrence. He further submitted that it is in between quantity and even according to the case of the prosecution, the alleged seized tables are under in between quantity and it is not a commercial quantity. He further submitted that Section II - General Procedure for Sampling, Storage, etc. in the Standing Prder 1 of 1989, Government of India, Ministry of Finance (Department of Revenue) dated



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13.06.1989, all drugs shall be properly classified, carefully weighed and sampled on the spot of seizure. All the packages/containers shall be serially numbered and kept in lots for sampling. The samples from the narcotic drugs and psychotropic substances shall be drawn on the spot of recovery, in duplicate, in the presence of such witnesses and the person from whose possession the drug is recovered and, a mention to this effect should invariably be made in the panchanama drawn of the spot. The quantity to be drawn in each sample for chemical test shall not be less than five grams in respect of all drugs and psychotropic substances save in the cases of opium, ganja and charas where a quantity of 24 gams in each is required for temple test.

3.1 He further submitted that in the case of seizure of a single package, one sample in duplicate shall be drawn. However when the packages/containers seized together and of identical seized and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all the respects, the packages may be carefully bunched in lots of 10



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packages except in the case of ganja and hashish, where it may be bunches in lots of 40 such packages/ containers, one sample may be drawn. In the case on hand, the sample was not weighed on the spot and also not stated in the seizure mahazar. The respondent failed to take any sample of five grams for chemical test. In support of his contention, he cited the judgment of the Hon'ble Supreme Court of India wherein it is observed that the standing order cannot be flouted and in the absence of substantial compliance of the standing order, adverse interference to be drawn against the prosecution. In support of his contention, he also cited various judgments of various High Courts. He further submitted that the petitioner was arrested and remanded to judicial custody on 30.07.2021. Now the investigation has been completed and also filed final report, which is pending for trial in CC.No.322 of 2021.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that though the alleged contraband was seized from the petitioner on the confession of A1, all the tablets are under the same batch and same tablets. Therefore, the samples need not be taken from the contraband



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seized from the petitioner. The first accused is a wholesaler and he used to supply the drug to other accused persons to sell the same in the open market.

Though the respondent filed final report and the same was taken cognizance, the accused persons are not cooperating for proceedings with the trial. There are totally five accused, in which the petitioner is arrayed as A2 as per the charge sheet. On the confession of the first accused, nitroxit 10 mg - 1200 tablets and tydol - 30 tablets were seized from the petitioner. It is a commercial quantity and as such, the petitioner is not entitled for bail.

5. Heard, the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6. It is the third bail petition filed by the petitioner. The petitioner was arrested and remanded to judicial custody on 30.07.2021. Even according to the case of the prosecution, on the confession statement of the first accused, the respondent arrested the petitioner and he was in possession of nitroxit 10 mg - 1200 tablets and tydol - 30 tablets. The only ground raised by the petitioner is



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that no sample was taken from the contraband which was seized from the petitioner. He also pointed out the statement recorded from the respondent under Section 161 of Cr.P.C. Accordingly, no samples were drawn from the contraband which was seized from the petitioner. On perusal of seizure mahazar, revealed that nitroxit 10 mg tablet - 1200 Nos. from four boxes and tydol tablets – 3 strips containing 30 tablets each seized from the petitioner. On perusal of statement recorded under Section 161 of Cr.P.C. of the Investigation Officer also indicates that the contraband seized from A1, A4 and A5 were marked as P1 to P4 and the samples were marked as S1 to S4. On the confession of the first accused, on 30.07.2021 search was made on the petitioner and he was in possession of nitroxit 10 mg - 1200 tablets in four carton boxes, which were marked as P5 and the tydol 90 tablets was marked as P6. Therefore, admittedly no samples were taken from the drugs seized from the petitioner.

7. It is relevant to extract the general procedure for sampling provided in Standing Order No.01 of 1989 dated 13.06.1989 hereunder:



"2.1 All drugs shall be classified, carefully, weighed and sampled on the spot of seizure.

2.2 All the packages/containers shall be numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the persons from whose possession the drug is recovered and a mention to this effect should invariably be made in the panchnama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.



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2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects the packages/container may be carefully bunched in lots of 10 package/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of, 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.

2.6 Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

2.7 If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder package/container.

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative sample the in equal quantity is taken from each package/container of that



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lot and mixed together to make a composite whole from which the samples are drawn for that lot."

8. The Hon'ble Supreme Court of India held in the case of **Noor Aga Vs.**

State of Punjab reported in **(2008) 16 SCC 417** that the standing order in dispute and other guidelines issued by the authority having legal sanction are required to be complied by the arresting authorities. Therefore, the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. It is clear that there has been no substantial compliance of these guidelines by the respondent which leads to drawing of an adverse interference against them to the effect that had such evidence been produced, the same would have gone against the prosecution. There is non compliance of the procedure of sampling provided under the standing order which has statutory force and therefore, the petitioner may not be held guilty after the trial. Further, there is no prior criminal history of the petitioner which may compel this Court to take the view that the petitioner will commit further offence after being enlarged on bail. Therefore, the petitioner satisfied this Court with regards to twin conditions as contemplated under



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Section 37 of NDPS Act. Hence, this Court is inclined to grant bail to the petitioner.

9. Accordingly, the petitioner shall donate a sum of Rs.25,000/-(Rupees Twenty Five Thousand only), to the credit of the RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; Ph No.8939065431 and on such donation, 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 learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act at 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 donate a sum of Rs.25,000/-(Rupees Twenty Five Thousand only), to the credit of the RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; Ph No.8939065431, and that the receipt of such donation shall be produced before the concerned



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Magistrate at the time of executing the bond;

[c] the petitioner shall report before the trial court i.e. the learned Special Judge, II Additional Special Court for Exclusive Trial of Cases under NDPS Act at Chennai daily at 10.30 a.m. and 05.30 p.m. until further orders.

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