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Crl.OP.Nos.30683 & 30684 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

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

Crl.OP.Nos.30683 & 30684 of 2022

I.Athan Ali Bek

..Petitioner in Crl.O.P.No.30683 of 2022

S.Mohammed Sameer Khan

..Petitioner in Crl.O.P.No.30684 of 2022

Vs.

State Rep. by

The Inspector of Police,

F-4, Thousand Lights Police Station,

Chennai – 600 006.

(Crime No.45 of 2022)

..Respondent in both the petitions

Prayer: Criminal Original Petitions are filed under Section 439 of Cr.P.C.

praying to enlarge the petitioner on bail pending trial in Crime No.45 of 2022

on the file of the respondent Police.

(In both the cases)

For Petitioner : Mr.S.Apunu

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 27.03.2022 at the hands of the respondent police for the offences punishable



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under Sections 8(c), 20(b)(ii)(B), 22 (b), and 22 (C) of NDPS Act, 1985 and Section 25(1)(a) of Arms Act, 1959, in Crime No.45 of 2022, seeks bail.

2. The case of the prosecution as per the defacto complainant is that on receipt of a secret information from the informant, the respondent police along with his team went to the scene of occurrence and found the petitioners, and along with other accused, was in possession of contraband namely Nitrozepom Tablets 60 strips each strip containing 15 tablets, totalling 900; tablets, Nitrozepom Tablets 2 strips each strip containing 15 tablets, totalling 30 tablets; Chaco Cough Syrup 100 ML of 11 bottles and Nitrozepom Tablets 2 strips each strip containing 15 tablets, totalling 30 Tablets. Hence, the complaint.

3. The learned counsel for the petitioner would submit that there are totally four accused in this case, in which, the petitioners are arrayed as A1 and A2. They were arrested and remanded to judicial custody on 27.03.2022. Even according to the case of the prosecution, the petitioners were found in possession of two toy air guns and it is not coming under the purview of the Arms Act, 1959. In so far as, the contraband is concerned, no contraband was seized from A1 and A2. According to the prosecution, the third accused was in



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possession of Nitrozepom Tablets 2 strips each strip containing 15 tablets totalling 30 tablets and Chaco Cough Syrup 100 ML of 11 bottles. Though, they were together, the contraband seized from A3 is not a commercial quantity. That apart, the samples were not taken even till today and no tablet was sent for chemical analysis. They were arrested and remanded to judicial custody on 27.03.2022 and on their confession, A4 was arrested on the next day i.e., on 28.03.2022 and the contraband was seized from him. Even the contraband, which was allegedly seized from A3 was also not sent for chemical analysis so far. Hence, he prays for grant of bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that admittedly, A1 and A2 were found in possession of Toy Air Guns and the offence under Section 25(i)(a) of the Arms Act, 1959 would not be attracted as against the accused. Further, they were found in conscious possession of contraband weighing more than commercial quantity. Further, there is no contraband sent for chemical analysis. He would further submit that the petitioner has no previous case against him. However, he vehemently opposed for grant of bail to the petitioner.



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5. It is seen that even according to the case of the prosecution A1 and A2 were found in possession of toy guns, it would not attract any offence under the Arms Act. In so far as, the tablets seized from the accused are concerned, A3 alone was in possession of 2 strips each containing 15 tablets of Nitrozepom, totalling 30 tablets and Chaco Cough Syrup 100 ML of 11 bottles, though they were together. That apart, no sample was taken for chemical analysis till today. On the confession of first accused, the fourth accused was arrested and seized Nitrozepom tablets 2 strips each containing 15 tablets totalling 30 tablets on 28.03.2022. In fact, in so far, no sample was taken for chemical analysis, even the tablets seized from A4. Therefore, the petitioners have made out prima facie case to fulfil the twin conditions as contemplated under Section 37 of NDPS Act.

6. Considering the above facts and circumstances of the case and also the period of incarceration by the petitioner from the date of arrest i.e., 27.03.2022, this Court is inclined to grant bail to the petitioner. Accordingly, **the petitioner shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) to the credit of the RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; No.10, Nageswara Road,**



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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 XVIth Metropolitan Magistrate, Egmore, 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 deposit a sum of Rs.10,000/- (Rupees Ten 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 respondent police daily at 10.30 a.m. and 5.30 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.



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[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.

12.12.2022

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The XVIth Metropolitan Magistrate, Egmore.
- 2.The Inspector of Police,
F-4, Thousand Lights Police Station,
Chennai – 600 006.
- 3.Central Prison, Puzhal.
- 4.The Public Prosecutor,
High Court of Madras.

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