



WEB COPY



Crl.O.P.No.3487 of 2023

**Crl.O.P.No.3487 of 2023**

**T.V.THAMILSELVI, J.**

The petitioner, who was arrested and remanded to judicial custody on 04.03.2021, for the offences punishable under Sections 8(c), r/w 20(b)(ii)(c), 28 and 29 of the NDPS Act in C.C.No.244 of 2021 on the file of the II Additional Special Judge for NDPS Act cases in Chennai, seeks bail.

2. It is the case of the prosecution that based on information from the Security Executive of Aramex India Private Ltd., a courier company dealing with domestic and international courier consignments, the respondent reached the office of Aramex India Pvt. Ltd., and on the Security Executive identifying a parcel, which was said to have been booked by Dil Express Jhaver Plaza, Chennai, the same was opened and the parcel was said to have contained 4.6 kgs., of black coloured sticky substance, believed to be Hashish. The same was confiscated under mahazar and samples were drawn and sent to the forensic lab for analysis.



Crl.O.P.No.3487 of 2023

WEB COPY

3. Thereafter, the owner of Dil Express Jhaver Plaza was summoned and on enquiry, it revealed that one Ranjit Singh had booked the parcel to Qatar. Based on the said information, the said Ranjit Singh was enquired, which revealed that the parcel was booked by the petitioner and one Mohd. Mafiz in the name of Amit Kumar Sarki for onward transmission to Qatar. Further enquiry revealed that Mohd. Mafiz had left for Kolkata and thereafter, the respondent intercepted the petitioner at Kolkata Airport and upon enquiry, the petitioner gave a voluntary confession statement admitting his guilt in dealing with narcotic drugs and also admitted that the drugs seized at Aramex India Pvt. Ltd., belongs to him and was remanded to judicial custody. Hence, the case.

4. This is the third bail application filed by the petitioner and the earlier bail applications in Crl.O.P.Nos.10366 of 2021 & 7354 of 2022 were dismissed by this Court vide order dated 06.07.2021 & 29.06.2022 respectively.



Crl.O.P.No.3487 of 2023

WEB COPY

5. The learned counsel appearing for the petitioner submitted that the petitioner is no way connected with the offence and that he has no criminal antecedents and that he hails from Kolkata and he has been wrongly implicated in this case. He submitted that though a search conducted at the house of the petitioner's residence at Kolkata, the said search did not result in seizure of any contraband and there is no material to connect the alleged contraband with the petitioner and the petitioner was not in possession of any contraband at any point of time. He further submitted that the seizure was not effected in the presence of respectable inhabitants of the locality, but was made only in the presence of the informant and another employee of the courier company and, therefore, the seizure is not in accordance with Section 51 of the NDPS Act r/w Section 100 (4) Cr.P.C. He further submitted that even the parcels were not booked in the name of the petitioner but in the name of some other person, who has not been shown as an accused in this case. He further submitted that the incriminating statement of one Ranjit Singh, recorded u/s 67 of the NDPS Act cannot be utilized by the prosecution to fasten the guilt on the petitioner as the said Ranjit has neither been shown as a witness nor as an accused. It is the further submission of the learned



Crl.O.P.No.3487 of 2023

WEB COPY

counsel that the statement of the petitioner recorded u/s 67 of the NDPS Act cannot be used against the petitioner as the same is barred to be received as evidence u/s 25 of the Evidence Act as the same was recorded by the investigating officers as laid down by the Hon'ble Supreme Court in the case of *Tofan Singh -Vs- State of Tamil Nadu* reported in **2020 SCC OnLine SC 882**, which reads as follows:

“**156.** The judgment in *Kanhaiyalai* (supra) then goes on to follow *Raj Kumar Karwal* (supra) in paragraphs 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

**157.** On the other hand, for the reasons given by us in this judgment, the judgments of *Noor Aga* (supra) and *Nirmal Singh Pehlwan v. Inspector, Customs* (2011) 12 SCC 298 are correct in law.

**158.** We answer the reference by stating:

(i) That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the



WEB COPY



Crl.O.P.No.3487 of 2023

Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

6. The learned Special Public Prosecutor appearing for the respondent police submits that during the course of investigation and from the voluntary statement of Nag Narayan Prasad, it has come to light that Nag Narayan Prasad and Md.Mafiz, S/o.Md. Sakil together went to New Jalbhai Gudi (NJP) Railway Station on 26.02.2021 along with the seized contraband and booked the same parcel through Rail Freight to Chennai in the name of Md.Mafiz, S/o-MD.Sakil and given his Adhaar card for ID proof. In this regard a letter was sent to Southern Railway, Chennai and they replied that the parcel booked on 26.02.2021 at New Jalbhai Gudi (NJP) Railway Station in the name of Md.Mafiz, and reached Chennai on 01.03.2021 and delivered on same day. Moreover,



CrI.O.P.No.3487 of 2023

WEB COPY

mobile tower location of No.7076529757 used by Md.Mafiz is in active at New Jalbhai Gudi (NJP) Railway station on 26.02.2021. Hence, it is clearly proved that Nag Nazrayan Prasad and Md.Mafiz went to New Jalbhai Gudi (NJP) Railway station along with the seized drug which was booked on 26.02.2021 at Nag Narayan Prasad. Further, as per Mahazar dated 02.02.2021 NCB Officers seized 4.600 Kgs of Hashish which was seized at M/s.Aramex India Pvt. Ltd., Ekkaduthangal, Chennai which is commercial quantity. He further submitted that the petitioner is not innocent and if the petitioner is enlarged on bail, he may tamper with the evidence and the other accused involved in this case is still absconding. Hence, he opposed for grant of bail to the petitioner.

7. It is seen that the petitioner had committed very serious and heinous offence. The contraband involved in this case is commercial quantity and this Court already dismissed the earlier bail petitions and there is no change in circumstances to consider the present bail petition. Taking into consideration the above facts and circumstances of the case, this Court is not inclined to grant bail to the petitioner.



Crl.O.P.No.3487 of 2023

WEB COPY

8. This Criminal Original Petition stands dismissed accordingly and the trial Court is directed to complete the trial as expeditiously as possible.

gbi

**03.03.2023**



WEB COPY



Crl.O.P.No.3487 of 2023

**T.V.THAMILSELVI, J.**

gbi

**Crl.O.P.No.3487 of 2023**

**03.03.2023**