



Crl.O.P.No.4515 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.08.2023
Pronounced on	.09.2023

CORAM

THE HON'BLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.4515 of 2023

V.Packiakumar

...Petitioner

Vs.

Central rep by
The Intelligence Officer,
Directorate of Revenue Intelligence,
No.27, G.N.Chetty Road,
T.Nagar, Chennai 600 017
R.R.No.11/2016
F.No.DRI/CZU/VII/48/ENQ-I/INT-98/2016

...Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in CC.No.48 of 2017 pending trial on the file of the II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor for DRI Cases



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 21.03.2022 for the offence punishable under Section 8(c), 9(A), 21(c), 22(c), 23(c), 25(A), 28 and 29 of NDPS Act in CC.No.48 of 2017, pending trial on the file of the II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai, seeks bail.

2. The case of the complainant, relevant for the purpose of disposal of this petition, in brief is as follows:

2.1 A specific information was received to the effect that some contraband items, covered under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”), had been concealed inside a consignment intended for export and that another consignment concealed with Alprazolam Tablets, covered by NDPS Act, was arriving at Chennai through speed post and that the said consignment, intended for export, was filed in the name of M/s.M.M. Exporters, Old No.55/1, New No.133, Lingi Chetty Street, Mannady,



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Chennai 600 001 under Shipping Bill [SB] No.2418014 dated 24.11.2016 in container No.GESU5984926.

2.2 In pursuance of the information, the officers of the respondent conducted a search at the godown premises, namely M/s.Udayam Export of one Syed Musafar Sadiq (A1), situated at No.105, New Street, S.P.Koil Street, Mannady, Chennai 600 001 on 25.11.2016. The officials found the cotton boxes meant for Export to Malaysia. They cut opened and examined some cotton boxes and then found to contain sarees, chudidars and cosmetic items, etc. They detained them along with Indian currency of Rs.27,24,800/- under Mahazar dated 25/26.11.2016. Further, the officials seized 9990 Alprazolam tablets on 26.11.2016 from a speed post article No.EU667761597IN at National Sorting Hub, Chennai at St.Thomas Mount, Head Post Office Complex, Chennai 600 016 under Mahazar dated 26.11.2016. This parcel was found to have been booked by one Tariq Ali Khan. The necessary samples were taken from the tablets seized.



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2.3 On 28.11.2016, the officers conducted examination of container No.GESU5984926 of M/s.Triway CFS at No.149, Idayanchavadi, New Nappalayam Ponneri High Road, Chennai 600 103. The examination pertains to shipping bill No.2418014 dated 24.11.2016. The consignor was M/s.M.M. Exporters and the consignee was M/s.A.R.Bright Trading and Resources, at No.9, JLN Kota Laksamana, 1/7, TMN Kota Laksmana Seksyen 175 200 Melaka, Malaysia. This consignment found to have contained Pseudoephedrine valued at a sum of Rs.4,78,00,000/- in international market. It is a controlled substance covered under NDPS Act. This controlled substance was found to be rolled in rectangular shaped cardboard in specially made cavity with fabrics. Totally, there were 48 numbers of polythene covers containing white powdery substance. On testing the same with a field test kit, it answered for Pseudoephedrine and necessary samples were taken. The voluntary statement of accused were recorded under section 67 of NDPS Act.

2.4 The investigation revealed that the accused 1 and 2, namely



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Syed Musafar Sadiq and Sirajudeen, are involved in the trade of exporting fabrics to Malaysia. They also used to conceal and smuggle out the narcotic drugs along with fabrics. Those narcotic drugs are supplied by accused 5 and 6, namely Abu and Usman, for monetary consideration. A1 admitted that he was organizing the concealment and packing of 23.900 kgs of Pseudo Ephedrine for export using IEC number of M/s.M.M. Exporters. It is also admitted by him that 9990 Alprazolam tablets were sourced by fifth accused/Abu and the said parcel was to be collected by him for concealment and smuggling out in subsequent export consignment. The petitioner, who is A3, admitted that he used to arrange for export clearance of the consignments of narcotic drugs for monetary consideration. He admitted arranging for the clearance of the present consignment covered by Bill No.2418014 dated 24.11.2016. He knew that the consignment was concealed with white powdery substance seized by the officers of DRI vide mahazar dated 28.11.2016 and he admitted that he has aided and abetted in the export clearance of controlled substance.



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3. It is the submission of the learned counsel for the petitioner that the petitioner is an innocent and he is a freelance freight forwarder. There is no incriminating material available against him with regard to the seizure of 9990 Alprazolam tablets, except the confession statement of the co-accused. Though he is signatory to the Mahazar for the seizure of 23.900 kgs of Pseudoephedrine, he was not aware that the consignment contained this controlled substance. He only assisted the export clearance as a freelance freight forwarder.

4. In the earlier bail petition, the petitioner and other accused were granted bail by this Court on the basis of the order passed in Crl.RC.No.1575 of 2017 on 25.06.2018. This order was challenged before the Hon'ble Supreme Court in Crl.Appeal No. 363 of 2022. The Hon'ble Supreme Court set aside the order and directed the respondents therein, including petitioner, to surrender before the trial Court within a period of 2 weeks from the date of order and upon surrender, liberty was granted to the petitioner and co-accused to file a fresh application for bail



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before the trial Court for disposal on its own merits and in accordance with law. Pursuant to this order, the petitioner had surrendered before the trial Court and filed a bail petition in CRL.MP.No.5484 of 2022 on the file of the learned Special Judge, Second Additional Special Court for exclusive trial of cases under NDPS Act, Chennai. However this bail petition was dismissed and therefore, this criminal original petition is filed before this Court.

5. It is his further submitted that the contraband seized i.e., 23.990 kgs of Pseudoephedrine is not a narcotic drug or psychotropic substance, but it is only a controlled substance. Therefore, there is no need for the petitioner to satisfy the provision of Section 37 of NDPS Act. As per the judgement of Hon'ble Supreme Court in *Tofan Singh Vs. The State of Tamil Nadu* case reported in **2021 (4) SCC 1**, the statement given by the petitioner under Section 67 of NDPS Act is not admissible. Further, he submitted that the petitioner is no way connected with seizure of Alprazolam tablets. Though the Pseudoephedrine was seized in the presence of the petitioner and he signed the Mahazar, it is not a



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psychotropic substance. He is in judicial custody from 21.03.2022, and thus seeks bail.

6. In response, the learned Additional Public Prosecutor submitted that the petitioner is implicated on the basis of confession statement of the co-accused, insofar as the seizure of 9990 Alprazolam tablets. However 23.990 kgs of Pseudoephedrine, which is valued at Rs.4,78,00,000/- in the international market, was seized in the presence of the petitioner. The petitioner, in conspiracy with other accused, after knowing that the export consignment contained controlled substance, assisted its export through M/s.M.M. Exporters and received monetary consideration. Earlier also, he had involved in assisting the illegal export of narcotics substance on three times, however that had gone unnoticed. The petitioner was paid a sum of Rs.5,000 per kg in helping the illegal export of controlled substance in this case. Hence, he opposed this bail petition on the ground that if the petitioner is released on bail, he would abscond and involve in similar offence.



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7. Considered the rival submissions and perused the records.

8. From the materials produced and submissions of the learned counsel appearing for the parties, it is seen that the petitioner is the third accused in CC.No.48 of 2017 pending on the file of the II Additional Special Court of Exclusive Trial of cases under NDPS Act, Chennai. This complaint is filed against the accused for illegal dealing of 9990 Alprazolam tablets and 23.990 kgs of Pseudoephedrine. It is submitted that there is no direct incriminating material to incriminate the petitioner in the seizure of 9990 Alprazolam tablets. However, the seizure of 23.990 kgs of Pseudoephedrine was done in the presence of the petitioner on 28.11.2016. The petitioner has also signed in the Mahazar. There is no denial of fact that the petitioner had arranged for exporting the consignment, which contained 23.990 kgs of Pseudoephedrine, through M/s.M.M. Exporters.

9. The term “controlled substance” is defined under Section 2(7)(b) of NDPS Act and it reads as follows:



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“2. Definition:

(viid) “controlled substance” means any substance which the Central Government may, having regard to the available information as to its possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any international Convention, by notification in the Official Gazette, declare to be a controlled substance;”

10. The controlled substance is a precursor chemical used to manufacture narcotic drugs and psychotropic substances. The NDPS (Regulation of controlled substances) Order, 2013 regulates the manufacture, trade and commerce, possession and consumption of controlled substances.

11. Section 9(a) of NDPS Act deals with the power of Central Government to regulate the controlled substances and it reads as follows:

“9. Power of Central- Government to permit, control and regulate.-

(a) permit and regulate--

(i) the cultivation or gathering of any portion



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(such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, Possession, sale, purchase, transport, import inter-State, export inter-State, use or consumption of coca leaves;

(ii) the cultivation (such cultivation being only on account of Central Government) of the opium POPPY;

(iii) the production and manufacture of opium and production of poppy straw;

(iiia) the possession, transport, import inter-State, export inter-State, warehousing,, sale, purchase, consumption and use of poppy straw produced from plants from which no juice has been extracted through lancing

(iv) the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists;

(v) the manufacture of manufactured drugs (other than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to Possess;

(va) the manufacture, possession, transport,



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import inter-State, export inter-State, sale, purchase, consumption and use of essential narcotic drugs:

Provided that where, in respect of an essential narcotic drug the State Government has granted licence or permit under the provisions of Section 10 prior to the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014 (16 of 2014), such licence or Permit shall continue to be valid till the date of its expiry or for a period of twelve months from such commencement, whichever is earlier.

(vi) the manufacture, Possession & transport import inter-State, export inter-State, sale, purchase, consumption or use of Psychotropic substances.;

(vii) the import into India and export from India and transshipment of narcotic drugs and psychotropic substances;

12. The contravention of orders made under section 9A of the NDPS Act is liable for punishment under Section 25A of the NDPS Act and it reads as follows:

Section 25A in The Narcotic Drugs and Psychotropic Substances Act, 1985

25A. Punishment for contravention of orders made



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under section 9A.?

If any person contravenes an order made under section 9A, he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding one lakh rupees.

13. Combined reading of Sections 9(a) and 25A of NDPS Act makes it clear that if a person contravene the order made under Section 9A of the NDPS Act, he is liable for punishment of rigorous imprisonment, which may extend for a period of 10 years and also liable to be fined, which may extend upto Rs.1 lakh.

14. As per Section 4 of the NDPS (Regulation of controlled substances) Order, 2013, the manufacturing, distribution, sale, purchase, possession, storage and consumption of any controlled substance included in Schedule-A without a unique registration number in Form-A issued by Zonal Director of Narcotics Control Bureau is prohibited.



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Pseudoephedrine comes under Schedule-A. There is no material produced by the accused in this case that they have an unique registration number in Form-A issued by Zonal Director for the possession, sale, etc of Pseudoephedrine. Though the Pseudo Ephedrine is not a narcotic drug or psychotropic substance and that the rigor of Section 37 of NDPS Act is not applicable, the said controlled substance is used to manufacture the psychotic substance. The quantity seized is huge i.e., 23.900 kg of Pseudoephedrine and the same is said to be illegally exported to Malaysia. There is every possibility that the controlled substance will be used in the manufacture psychotropic substance, which would ultimately affect the humanity.

15. Taking into consideration of all these aspects, this Court is not inclined to grant bail to the petitioner. Accordingly, this criminal original petition is dismissed.

.09.2023

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To

- 1.The II Additional Special Court
for Exclusive Trial of cases under NDPS Act,
Chennai.
- 2.The Intelligence Officer,
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- 3.The Central Prison,
Puzhal.
- 4.The Public Prosecutor,
High Court of Madras



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G.CHANDRASEKHARAN. J.

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