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Crl.O.P.No.10270 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 21.07.2023	Orders pronounced on 26.07.2023
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.10270 of 2023

J.Stephen @ Moonu Thalai Stephen

... Petitioner

Vs.

State represented by
Inspector of Police
N-4, Fishing Harbour Police Station
Chennai – 600 006.
(Cr.No.105 of 2022)

... Respondent

This Criminal Original Petition is filed under Section 439 Cr.P.C praying to enlarge the petitioner on bail pending in C.C.No.42 of 2023 on the file of Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

For Petitioner	: Mr.M.G.Martin Manivannan
For Respondent	: Mr.Leonard Arul Joseph Selvam Government Advocate (Crl. Side)



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ORDER

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This Criminal Original Petition is filed for enlarging the petitioner on bail pending in C.C.No.42 of 2023 on the file of Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

2. Learned counsel for the petitioner submitted that petitioner is first accused in C.C.No.42 of 2023 on the file of Principal Special Judge, Special Court under EC & NDPS Act, Chennai, in Cr.No.105 of 2022 registered for the offences under Sections 8(c) read with 22(c) and 29(i) of NDPS Act. The allegation against the petitioner and co-accused is that they were selling MDMA contraband weighing 10.15gm approximately. Petitioner is an innocent. No contraband was seized from the petitioner. Respondent police failed to follow the instruction given in Standing Order 1/89 with regard to the procedures to be followed for sampling, storage etc. There is discrepancy in the First Information Report and laboratory report with regard to the colour of the tablets alleged to have been seized from the accused and analysed by the scientific analyst. There is also discrepancy in the weight of the tablets alleged to have been seized and analysed. These are



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all material contradictions raising a fundamental doubt as to whether the tablets said to have been seized from the accused were sent for analysis.

Petitioner suspect that there is change of samples sent to analyst. When there is material discrepancy in sending procedures, non-observance of procedures, as per Standing Order 1/89, petitioner is entitled for acquittal in this case. When he is entitled for acquittal, there is no doubt that he is also entitled for grant of bail. In support of his submissions, he pressed into service the following judgments:-

(i) ***120 (2005) DLT 417 (Mohd Ramzan ..vs.. State (NCT of Delhi))***, wherein Delhi High Court held as follows:-

“12. Essentially, the learned counsel for the State strongly relied upon the phrase "Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the learned single Judge during bail stage regarding the compliance of the formalities mentioned in those two sections." Taking a cue from this sentence in



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the said judgment of the Supreme Court, the learned counsel for the State submitted that the discrepancies that have emerged in the weights of the samples sent and received will be explained at the stage of evidence and should not be gone into at the stage of grant of bail.

13. Looking at the aforesaid two decisions of the Supreme Court it becomes clear that in the case of Jagdamba Avasthi (supra), the Supreme Court found it sufficient to acquit the accused therein on the ground of discrepancies in the quantities. Secondly, in the case relied upon by the counsel for the State the observation is that the presumption can be rebutted during evidence. In the present case, there is no presumption. The facts are that samples of 600 gms each were sent admittedly and admittedly the Forensic Science



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Laboratory has indicated that those very samples being S-12, S-25 and S-34 contained 630 gms, 560 gms and 750 gms respectively. There is, therefore, no question of a rebuttable presumption arising as in the case of Paulsamy (supra). Furthermore, it is to be noted that it is the requirement of [Section 37](#) that the court considering an application for bail has to go into the question as to whether there exist or do not exist reasonable grounds of believing that the accused is not guilty of such offence. Therefore, it becomes imperative, on the basis of the provisions of [Section 37](#) as well as what has been indicated in Ram Samujh (supra), that even at the stage of grant of bail, the court has to go into the question of whether any grounds exist to indicate whether the accused is guilty of the offence or not on the basis of the available material before the



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court. Having considered the facts and circumstances of this case, I am satisfied that there are reasonable grounds for believing that the present petitioner is not guilty of the offence for which he has been charged. With regard to the second aspect that the petitioner is not likely to commit any offence while on bail, the learned counsel for the petitioner has stated that there are no criminal antecedents insofar as the present petitioner is concerned and this has not been controverted by the prosecution.”

(ii) Chattisgarh High Court Judgment in a case between (***Ramjeet Singh Rathore ..vs.. State of Chhattisgarh***), wherein Chattisgarh High Court observed as follows:-

“Considering the vital aspect of non compliance of mandatory provisions of Standing Order No. 1/89, the trial Court has convicted the



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appellant, considering the order passed by the Division Bench of this Court in CRA No. 1616 of 2019 on 24.08.2021 and also considering the fact that the appellant has already undergone the jail sentence i.e. more than 5 years out of 10 years maximum jail sentence awarded to him and also considering the fact that the appeal is of the year 2021 and hearing of the appeal will likely to take some time for its disposal, therefore, I am inclined to allow this application.”

(iii) Delhi High Court Judgment in a case between (***Amani Fidel Chris ..vs.. Narcotics Control Bureau***), wherein Delhi High Court held as follows-

“ 89. Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis-a-vis a departmental proceeding, rigours of such



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guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

90. Recently, this Court in *State of Kerala and Ors. v. Kurian Abraham (P) Ltd.* (2008) 3 SCC 582 following the earlier decision of this Court in *Union of India v. Azadi Bachao Andolan* (2004) 10 SCC 1 held that statutory instructions are mandatory in nature.

91. Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted



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upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."

(emphasis added)

23. In Union of India & Ors. v. Bal Mukund & Ors. reported as (2009) 12 SCC 161, the Supreme Court while referring to the Standing Instruction 1/88, held as follows :-

"36. There is another aspect of the matter which cannot also be lost sight of. Standing Instruction No. 1/88, which had been issued under the Act, lays down the procedure for taking samples. The High Court has noticed that PW- 7 had taken



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samples of 25 grams each from all the five bags

and then mixed them and sent to the laboratory.

There is nothing to show that adequate quantity

from each bag had been taken. It was a

requirement in law."''

3. In reply, learned Government Advocate (Crl. Side) submitted that it is not true that the sampling procedure was not followed. 21 tablets containing psychotropic substances were recovered from the accused. All the 21 tablets were sent for chemical analysis. The chemical analysis report clearly established that N-alpha-dimethyl-3,4-methylenedioxy-phenyl ethylamine (MDMA) was detected in all the four samples. N,alpha-dimethyl-3,4-(methylenedioxy)-phenylethylamine is also known as N-Methyl-3,4-methylenedioxyamphetamine or 3,4-Methylenedioxy methamphetamine (MDMA). N, alpha-dimethyl-3, 4-(methylenedioxy) phenylethylamine, is psychotropic substance covered under Narcotic Drugs and Psychotropic Substances Act, 1985. The quantity of contraband seized from the petitioner is a commercial quantity and therefore, petitioner has to



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satisfy the twin conditions under Section 37 of NDPS Act for the grant of bail. Petitioner has not satisfied the conditions and therefore, he is not entitled for bail. Learned Government Advocate (Crl. Side) further submitted that psychotropic substance possessed by the petitioner is mostly sold among school and college students, spoiling the entire generation of youngsters. Hence, he prays for dismissal of this petition.

4. Considered the rival submissions and perused the records.

5. It is seen from the First Information Report allegations that on 11.06.2022 at about 13.50 hours, the police party, as identified by secret informant, found three persons at Nagooran Thoottam Pallam. On seeing the police, they tried to escape. Police arrested two persons named Stephen @ Moonu Thalai Stephen and Muthu @ Desamuthu. They came to know from them that the name of the person who escaped is Mathi @ Mathiyazhagan. After following the mandatory procedures under NDPS Act, they made a search and found from the black colour pocket handed over by the petitioner, 21 tablets in different colours namely, blue, cement,



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rose and brown and on weighing the tablets, it measured 10.15gm. The tablets were seized under Mahazar. All the 21 tablets were packed in a white colour cover and it was put in a brown colour (காக்கி கலர்) cover and sealed. The signature of the accused was also obtained. Then, First Information Report was registered.

6. Main submissions of the learned counsel for the petitioner is that (1) sampling procedure was not properly done (2) there is discrepancy of colours in the First Information Report and in the chemical analysis report (3) there is discrepancy in the weight of the tablets in the First Information Report and in the chemical analysis report. One more submission of the learned counsel for the petitioner is that the copy of the cover containing chemical analysis report was served to the petitioner under Section 207 Cr.P.C. It shows that the cover addressed to the Court was opened by the police.

7. From the judgments produced by the learned counsel for the petitioner, the ratio is that, if the sampling procedure is not properly



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followed as per the Standing Order 1/89, it may be a ground for acquittal.

However, the cases relied by the learned counsel for the petitioner relate to ganja and other narcotic and psychotropic substances, where sampling was done from the large volume of narcotic/psychotropic substances seized. However, in the case before hand, all the 21 tablets seized were sent for analysis. The seizure is not a great volume/quantity of psychotropic substance. But only 21 tablets were seized. Therefore, in the considered view of this Court, the judgments relied by the learned counsel for the petitioner in support of his submission that the sampling was not properly done in this case cannot be applied to the facts and circumstances of this case, for the reason that the entire 21 tablets were sent for analysis and all the 21 tablets were used up during the analysis.

8. It is seen from the First Information Report that the tablets in different colours viz., blue, cement, rose and brown were seized. However, in the chemical analysis report, it is stated that the tablets analysed are blue, orange, grey and brown colour tablets. Probably the rose colour tablet was referred as orange and cement colour tablet was referred as grey. When



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defining the colour, perception may differ. Some may refer the rose colour as rose or pink or orange. Cement colour may be referred as grey colour.

Therefore, this Court does not find any sustainable discrepancy in defining the colours. First Information Report shows that the weight of 21 tablets as 10.15gm. The chemical analysis report shows that there were 9 orange coloured tablets weighing 4.125gm, 8 blue coloured tablets weighing 3.971gm, 2 brown coloured tablets weighing 1.054gm and 2 grey coloured tablets weighing 0.979gm. When calculated, the total weight of these tablets comes to 10.129gm. There is no vast difference in the weight shown in the First Information Report and weight given in the chemical analysis report. There may be some difference in weight when weighing in an open place and weighing in a closed place and also due to some inherent or mechanical defect in the weighing machine. What is important to find out is, whether the substances seized were analysed by the chemical analyst.

9. In the case before hand, 21 tablets seized were sealed in the presence of accused. The signature of the petitioner/accused was obtained in the sealed cover and then, it was sent for analysis. The chemical analysis



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report shows that the sealed paper parcel was received under unbroken seal and the seal in the cover corresponded with the specimen seal provided in the requisition letter. All the four samples were analysed by following (i) Chemical Tests (ii) Thin Layer Chromotography (Multiple Systems) (iii) Fourier Transform Infrared Spectrometry and (iv) Gas Chromatography – Mass Spectrometry. After analysis, it was found that the tablets detected for N, alpha-dimethyl-3,4- (methylenedioxy) - phenylethylamine (MDMA), which is also known as N-Methyl-3,4-methylenedioxyamphetamine or 3,4-Methylenedioxy methamphetamine (MDMA). It is psychotropic substance covered under Narcotic Drugs and Psychotropic Substances Act, 1985. As per entry level 134 of Notification appended to NDPS Act, S.O.527 (E) dated 16.07.1996, 10 gm and above falls under commercial quantity.

10. With regard to the submission of the learned counsel for the petitioner that he was supplied with the copy of the opened postal cover, which contained chemical analysis report addressed to the Presiding Officer, this Court is of the view that this contention of the learned counsel for the petitioner may not be correct, for the reason that from the list of documents



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produced by the learned Government Advocate (Crl. Side), postal cover sent from the forensic laboratory to the Presiding Officer is not shown as one of the documents relied by the prosecution. Therefore, it is too tall to claim that the cover containing the chemical analysis report sent to Presiding Officer of NDPS Court was opened by the police. It is obviously not correct. Therefore, this contention is rejected outright.

11. From the materials produced, it is established prima facie that the petitioner was found in possession of 10.12gm of psychotropic substance, which is a commercial quantity. This substance is widely circulated for sale among the youth, especially student community. Unless the offenders are treated with heavy hand, the entire generation of youth would get spoiled. In view of the materials available, this Court cannot form an opinion that the petitioner has not committed an offence alleged against him and he will not commit such offence while on bail. In the said circumstances, this Court is not inclined to grant bail to the petitioner.

12. Accordingly, this Criminal Original Petition is dismissed.



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26.07.2023

mra

Index : Yes/No

Internet: Yes

Speaking Order/Non-speaking Order

To

1. The Principal Special Judge,
Special Court under EC & NDPS Act
Chennai.
2. Inspector of Police
N-4, Fishing Harbour Police Station
Chennai – 600 006.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.CHANDRASEKHARAN,J.

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order in
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