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Crl.OP.No.22040 of 2023

Reserved on : 18.10.2023

Pronounced on : 31.10.2023

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G.K.ILANTHIRAIYAN, J.

The petitioner, who was arrested and remanded to judicial custody on 26.06.2022 for the alleged offences under Sections 8(c) r/w 22(c) & 29(1) of NDPS Act, 1985 in crime No.121 of 2022 on the file of the respondent police, which was taken cognizance in CC.No.460 of 2022 before the learned Principal Special Judge of Principal Special Court under EC & NDPS Act, Chennai, seeks bail.

2. The case of the prosecution is that on 25.06.2022 at about 20.00 hours, the defacto complainant i.e. one, Boobalan, Sub Inspector of Police, N4 Fishing Harbour Police Station, Washermenpet received a secret information and entered the same in the General Diary. After getting permission from the then Inspector of Police, the Sub Inspector of Police along with his team went to the scene of occurrence i.e near Fishing Harbour, Kasar Ground. The Sub Inspector of Police along with the police team conducted



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enquiry with the accused persons A-1/Dinesh Kumar @ Dinesh, A-2/Aravindhan, who were found in possession of MDMA Ecstasy-23 tablets (11 grams), which comes under commercial quantity. Further, the respondent police arrested A-1 & A-2 and their confession was recorded. They also seized the case properties in the scene of occurrence in the presence of witnesses.

3. The learned counsel for the petitioner would submit that the petitioner is arrayed as first accused. The second accused was already granted bail by this Court. A false case has been foisted as against the petitioner and the petitioner was never in possession of the contraband as alleged by the prosecution. On 25.06.2022, the police personnel called the petitioner, thereby asked him to come near Foreshore Estate. However, the petitioner refused to come there and as such, immediately the police personnel had come to his house and he was taken to H-9, IOC Police Station. He was kept in the said police station in illegal custody till 8 a.m. on 26.06.2022. Thereafter, he was shifted to B2, Esplanade Police station where entire arrest procedure had taken place. Therefore, the petitioner filed application under Section 91 of Cr.P.C. before the trial court seeking to provide CCTV footage of the respondent police station for the period from 25.06.2022 to 26.06.2022.



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However, it was denied. The petitioner also filed application to provide call details with tower locations of the petitioner and the respondent officials. However, it was also denied. After remand only, the petitioner came to understand that the respondent had registered a case alleging that he was in possession of MDMA contraband to the commercial quantity of 11 grams.

3.1 He further submitted that the respondent failed to follow Sections 42 & 52A of NDPS Act. Even according to the case of the prosecution, they received secret information on 25.06.2022 at about 8 p.m. Thereafter, they obtained permission from the Superior Officer and at about 8.30 p.m., the respondent identified the accused. After seizure of the alleged contraband, they completed the entire process at about 11.50 p.m. Therefore, the entire search and other procedures were completed after sunset and before sunrise. However, the respondent failed to follow the procedure as contemplated under Section 42 of NDPS Act. The respondent failed to file any application under Section 52A of NDPS Act before the Magistrate. There was no certification done by the Magistrate to such effect. In support of his contention, along with various other judgments, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Karnail Singh Vs. State***



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of Haryana rendered in Crl.A.No.36 of 2003.
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4. The learned Government Advocate(crl.side) appearing for the respondent submitted that the Sub Inspector of Police recorded the confession statement of both the accused and proceeded for remanding them to judicial custody. The petitioner is a habitual offender and apart from the present case, he involved in various cases. He also involved in a case registered for offence under Section 302 of IPC along with other offences in crime No.313 of 2021. Now, it is pending for trial in SC.No.44 of 2022 on the file of the learned District Sessions Judge, Chengalpet. Further, the samples were sent to Forensic Science Laboratory for chemical analysis. The report was also received on 22.08.2022. The provisions under Section 42 as well as Section 52A of NDPS Act have been strictly followed. That apart, it is the fifth application for bail and absolutely there is no change of circumstances to consider the same.

5. Heard, Mr.M.G.Martin Manivannan, the learned counsel appearing for the petitioner and Mr.A.Gopinath, the learned Government Advocate (crl.side) appearing for the respondent.



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6. There are totally two accused, in which the petitioner is arrayed as the first accused. On 25.06.2022, on receipt of secret information, the respondent obtained permission and went to the scene of crime. Both the accused persons were identified and the first accused was found in possession of MDMA Ecstasy-23 tablets weighing 11 grams, which comes under commercial quantity. After recording their confession statement, the respondent seized the case properties from the scene of occurrence. Thereafter, the respondent registered FIR and remanded the accused persons to judicial custody on 26.06.2022.

7. The learned counsel for the petitioner mainly contended that the respondent failed to follow the provisions under Section 42 of NDPS Act. In this regard, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Karnail Singh Vs. State of Haryana*** rendered in Crl.A.No.36 of 2003, wherein it is held as follows:

17. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at



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all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of [section 42\(1\)](#).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of [section 42\(1\)](#) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .

(c) In other words, the compliance with the requirements of [Sections 42 \(1\) and 42\(2\)](#) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get



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postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of [section 42](#) is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of [section 42](#). To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of [section 42](#). But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of [section 42](#) of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of [section 42](#) of the Act. Whether there is adequate or substantial compliance with [section 42](#) or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to [section 42](#) by Act 9 of 2001.

8. Whereas, in the same judgment, the Hon'ble Supreme



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Court of India also held as follows:

16) The advent of cellular phones and wireless services in India has assured certain expectation regarding the quality, reliability and usefulness of the instantaneous messages. This technology has taken part in the system of police administration and investigation while growing consensus among the policy makers about it. Now for the last two decades police investigation has gone through a sea- change. Law enforcement officials can easily access any information anywhere even when they are on the move and not physically present in the police station or their respective offices. For this change of circumstances, it may not be possible all the time to record the information which is collected through mobile phone communication in the Register/Records kept for those purposes in the police station or the respective offices of the authorized officials in the Act if the emergency of the situation so requires. As a result, if the statutory provisions under [Section 41\(2\)](#) and [42\(2\)](#) of the Act of writing down the information is interpreted as a mandatory provision, it will disable the haste of an emergency situation and may turn out to be in vain with regard to the criminal search and seizure. These provisions should not be misused by the



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wrongdoers/offenders as a major ground for acquittal. Consequently, these provisions should be taken as discretionary measure which should check the misuse of the Act rather than providing an escape to the hardened drug-peddlers.

9. Thus, it is clear that if the statutory provisions under [Section 41\(2\)](#) and [42\(2\)](#) of the Act of writing down the information is interpreted as a mandatory provision, it will disable the haste of an emergency situation and may turn out to be in vain with regard to the criminal search and seizure. In the case on hand, immediately after receipt of the secret information, the respondent entered the same in the General Diary and obtained permission for search and arrest. Therefore, even assuming that the respondent failed to comply the said provisions, these provisions should not be misused by the accused as a major ground for bail or acquittal. Therefore, these provisions should be taken as discretionary measure which should check the misuse of the Act rather than providing an escape to the hardened drug-peddlers.

10. Insofar as the provision under [Section 52A\(2\)](#) of NDPS



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Act is concerned, the grounds raised by the petitioner can be considered only during the trial before the trial court. That apart, the judgments cited by the learned counsel for the petitioner are all against the order of conviction. Therefore, they are not helpful to the case on hand. As such, this Court finds no change of circumstances to consider this bail petition.

11. Accordingly, this criminal original petition is dismissed.

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