



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.09.2023

Delivered on : 29.9.2023

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P. No.5082 of 2023

R.Westly

Petitioner

vs.

State rep. by
The Intelligence Officer,
NCB, Madras.
(NCB F.No.48/1/07/2019 NCB MDS)
(and NCB F.No.48/1/08/2019 NCB MDS)

Respondent

Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the Petitioner on bail pending trial in C.C.No.81 of 2019 on the file of the Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore.

For Petitioner : Mr.K.Balasubramaniam

For Respondent : Mr.N.P.Kmar, Special P.P. for NCB Cases

ORDER

The Criminal Original Petition has been filed by the petitioner/A1 in C.C.No.81 of 2019 on the file of the Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act



Cases, Coimbatore seeking bail pending trial.

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2. The factual background of the case is as under:-

i) On information received from one Sasi Kumar of DHL Express, Tiruppur on two consecutive days viz., on 25.6.2019 and 26.6.2019 about receipt of an international consignment on each day mentioning the name of the petitioner as consignor and two different names as consignee at Saudi Arabia, raising suspicion that they may contain some narcotic drugs, they were seized by the respondent.

ii) On investigation, the respondent found that those consignments contained 500 Tramadol Tablets each, which is a psychotropic substance, trafficking of which, is punishable under the NDPS Act. The respondent seized the consignment, drew samples and registered two cases in NCB F.No.48/01/07/2019 NCB-MDS and NCB F.No.48/01/08/2019 NCB-MDS.

iii) The investigation revealed that the consignments were sent by the petitioner based on the prescriptions given by Dr. Ram Vatwani of Bahrain, under whom, Westly was an employee when he was in Bahrain and the tablets were supplied by one Siddharth of New Delhi, who was introduced to Westly by Dr. Ram Vatwani.



iv) The petitioner was arrested on 09.07.2019 separately in each case and produced before the Court on 10.07.2019 with two remand applications and he was accordingly remanded in both the cases.

v) Subsequently, the respondent had filed a memo on 19.7.2019 in the Special Court or NDPS Act Cases, Coimbatore for amalgamation of the two cases viz., NCB F.No.48/01/07/2019 NCB-MDS and NCB F.No.48/01/08/2019 NCB-MDS into a single case.

vi) After completing the procedures with regard to chemical examination of the contraband seized and receipt of reports, the respondent had filed a single complaint for 1000 tablets against the present petitioner being A1, Dr.Ram Vatwani as A2 and Siddharth as A3 for the offences under Sections 22(c), 23(c), 28 and 29 of the NDPS Act before the Special Court for NDPS Act Cases, Coimbatore, and the same was taken on file as C.C. No.81 of 2019.

vii) During the course of investigation of the case by the respondent, the petitioner had moved this court on two occasion, one by way of filing two separate Applications in CrI.O.P.No.27965 and 27966 of 2019, which came to be dismissed on 25.10.2019 and the other being the bail applications in CrI.O.P.No.6408 and 6409 of 2020 and the same was also dismissed on 23.3.2020.



viii) All along the proceedings, it is the case of the petitioner that there were two consignments with 500 tablets each and thus the contraband in each consignment would weight approximately 235 grams, which is below the commercial quantity of 250 grams and would not attract the rigors of Section 37 of the NDPS Act, whereas, if both the consignments are clubbed together, it would weigh about 470 grams and attracts the provisions of Section 37 of the NDPS Act and this course of action has been opted by the respondent only to cripple the petitioner by bringing his case within the ambit of Section 22(c) of the NDPS Act and thereby make it difficult for the petitioner to come out on bail.

ix) The correctness of the amalgamation of the cases has been questioned by the petitioner in Crl.R.C.No.112 of 2020 and this court, by order dated 14.10.2020, observed that such a practice of does not warrant any interference.

x) The petitioner took the matter to the Apex Court in S.L.P.No.1845 of 2021 and the Apex Court disposed the SLP by order dated 17.5.2022, leaving the issue as to whether two separate complaints should have been filed or the matter has to be tried through one complaint by consolidation to be dealt with at the final



stage while making it open to the Trial Court to examine any application for bail to be filed by the petitioner.

xi) Subsequently, the petitioner had filed an Application in C.M.P.No.1563 of 2022 before the Trial Court and the same was dismissed by the Trial Court holding that charge sheet has already been filed and the petitioner does not satisfy the twin conditions imposed under Section 37 of NDPS Act. Ultimately, the present petition has been moved by the petitioner seeking bail.

3. Learned counsel Mr.K.Balasubramaniam appearing for the petitioner would submit his arguments as under:-

i) The petitioner is a well educated and law abiding person. He had completed his Post Graduate Diploma in Neuro-Electro Physiology in the year 2009 and he had worked under Dr.Ram Vatwani, a Neurologist in Bahrain from 3.6.2010 to 5.1.2019.

ii) Two consignments were seized by the respondent consisting of 235 grams of contraband in each, whereas the respondent has amalgamated both cases into one complaint to show the total seizure as 470 grams and thereby the apply the rigors of Section 37 of the NDPS Act.



iii) The petitioner has been in custody for the past about four years, from 10.7.2019 in connection with seizure of both the consignments and he has been extending his full co-operation for the investigation and trial.

iv) The pathetic case of the petitioner is that during the pendency of his custody, on 23.3.2020, a female child was born out of his wedlock with his wife, M.C.Sherylmerin and he had not even seen his child since her birth.

v) Though charges were already framed on 28.12.2022 itself and trial has begun on 27.4.2023, the extract of 'A' Diary would reveal that there is no progress at all in the trial and the remand of the petitioner has been extended time and again on one ground or another including the death of the Special Public Prosecutor and that even after appointment of a new Prosecutor, there is no progress in the trial.

vi) The petitioner had appeared on summons and that other than the confession recorded by the respondent under Section 67 of the NDPS Act, there is no other material and there are reasonable grounds for believing that he is not guilty of such offence.

vii) In case of prolonged incarceration, which is against fundamental right of protection of life and personal liberty guaranteed



under Article 21 of the Constitution of India, conditional liberty will override the statutory embargo under Section 37 of the Act as observed by the Apex Court in ***Rabi Prakash vs. The state of Odisha*** (2023 LiveLaw (SC) 533).

viii) The petitioner, who has no previous bad antecedents, has been languishing in jail as an under trial prisoner due to the delay on the part of the prosecuting in conducting the trial and in the event of the petitioner being granted bail, he is not likely to commit any offence while on bail and hence, he prays for indulgence of this court in granting bail to him pending trial.

4. Mr.N.P.Kumar, learned Special Public Prosecutor for NCB Cases would submit his arguments as under:-

The investigation done by the respondent reveals that the petitioner was knowingly involved in the trafficking of drugs to Gulf countries. This court had given a finding that combining of two seizures is not bad in law and the Apex Court has also left the issue to be decided at the final stage and thus, the provisions of Section 37 of NDPS Act comes into play. The present bail petition does not reveal any change of circumstances from that of the previous ones



warranting indulgence of this court. Statement of accused has been recorded under Section 313 Cr.P.C. and charges have already been framed against the accused. The trial against the accused is scheduled to begin in a short while and would be completed quickly and thus, enlarging the petitioner on bail at this juncture will provide him an opportunity to abscond and further delay the trial and thereby, the present petition seeking bail is liable to be dismissed.

5. The petitioner seeks for bail pending trial of a case being faced by him for the alleged commission of offence punishable under Sections 22(c), 23(c), 28 and 29 of the NDPS Act. The main grounds taken by the petitioner for seeking plea are two fold, one being the aspect of amalgamation of two seizures into a single complaint to attract the rigors of Section 37 NDPS Act to thwart the plea of bail and the other being long incarceration of the petitioner without any progress in trial.

6. The first limb of the argument has already been kept in abeyance to be decided at the final stage as ordered by the Apex Court. Coming to the second limb of the argument as to whether the



long incarceration as under-trial prisoner can have any impact on the statutory embargo laid by Section 37 of NDPS Act for granting bail, it is seen that in a recent decision in **Rabi Prakash vs. The state of Odisha** (2023 LiveLaw (SC) 533), the Apex Court has held as under:-

*"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already **spent more than three and a half years in custody**. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."*



7. On the ground of delay in concluding trial and long incarceration in a similar case of NDPS Act, the Apex Court has held in ***Dheeraj Kumar Shukla vs. State of Uttar Pradesh*** (2023) SCC OnLine SC 918 as under:-

*"It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that **the petitioner is in custody for the last two and a half years**, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed."*

8. In a similar case, the Kerala High Court, by relying on the decision in ***Dheeraj Kumar Shukla vs. State of Uttar Pradesh*** (2023) SCC OnLine SC 918 and some other decisions of the the Apex Court on the issue, has held as under:-

"11. *Epitomizing the parameters laid down by the Apex Court in the decisions herein above discussed,*



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the following parameters clubbed together can be considered to dilute the rigour under Section [37](#) of the [NDPS Act](#):

(1) the accused should not have any criminal antecedents.

(2) the accused has been in custody for a pretty long time, at least more than one year, (say for eg. two years and 15 days in the instant case).

(3) the impossibility of trial within a reasonable time, i.e. at least within a period of six months, after completion of his custody for a period of more than one year (for this purpose, the Court granting bail should ensure that trial could not be completed at least within a period of six months, from the date of consideration of the plea of bail).

12. *Yet another aspect to be added in the list, in my view, is the quantity of the contraband. That is to say, when the quantity of contraband is something above the intermediate quantity and the same is not a huge or sizable quantity, the same*



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also can be considered after satisfying the above 3 parameters stated herein above, for diluting the rigour under Section [37](#) of the [NDPS Act](#).

13. *In this matter, the petitioner has been in custody from 28.03.2021 and now more than two years have been elapsed and trial has not yet started. The petitioner has no criminal antecedents. Further, there is no possibility to complete the trial within a reasonable time, at least within a period of six months. Thus, the three parameters can be found in favour of the petitioner. Therefore, I am of the view that the petitioner can be enlarged on bail satisfying the rigour under Section [37](#) of the [NDPS Act](#)."*

9. In the light of the above decisions, this court does not find any reason to deny the personal liberty to the petitioner guaranteed under Article 21 of the Constitution of India and affirmed in the above decisions, especially in the facts and circumstances of the case that the recovery is stated to have been effected at a Courier Office, the



petitioner had appeared on Summons for enquiry and a statement had been recorded from him under Section 67 of the NDPS Act and later the petitioner was arrested and remanded to judicial custody on 10.7.2019 and he has been languishing in jail as an under-trial prisoner for the past four years without there being any progress in trial despite the charges having been framed on 28.12.2022. Further, he has been in jail for the past four years and this court is satisfied that he is not likely to commit any offence while on bail.

10. In view of the above, this court is inclined to grant bail to the petitioner on certain conditions. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.25,000/- (Rupees twenty thousand only)** with **two sureties (out of which, one shall be a relative)** for a like sum to the satisfaction of the **learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore** 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 report before the Special Court on every first working day of the week at 10.30 am and on every hearing;

[c] the petitioners shall not abscond during trial;

[d] the petitioner shall not leave India without prior permission of the jurisdictional court.

[e] the petitioner shall surrender his passport, if any, within 7 days from the date of his release, before the trial court. If he has no passport, he shall file an affidavit in this regard on the date of execution of the bond or within 3 days thereafter.

[f] the petitioners shall not tamper with evidence or witness during trial;

[g] On breach of any of the aforesaid conditions, the learned Special Judge 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 Special Judge himself as laid down by the



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Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];***

[h] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

11. The Criminal Original Petition is ordered accordingly.

29.9.2023.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. The Intelligence Officer,
NCB, Madras.
2. The Superintendent,
Central Prison, Coimbatore.
3. Special Public Prosecutor for NCB Cases,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

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P.D. ORDER IN
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