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Crl.O.P.Nos.32144, 32147 of 2022 and 324 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2023

DELIVERED ON : 03.02.2023

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.32144, 32147 of 2022 and 324 of 2023

Crl.O.P.Nos.32144, 32147 of 2022 and 324 of 2023:-

- | | |
|---------------------------|---|
| 1. Kishore | ... Petitioner in Crl.O.P.No.32144 of 2022 |
| 2. Muthupandi | ... Petitioner in Crl.O.P.No.32147 of 2022 |
| 3. G.Rajalakshmi @ Mithra | ... Petitioner in Crl.O.P.No.324 of 2023 |

Vs.

The State Represented by,
The Inspector of Police,
R-2, Kodambakkam Police Station,
Chennai. -600 024.
(Crime No.81 of 2022)

... Respondents in **(in all Crl.O.Ps)**

Prayer in Crl.O.P.No.32144 of 2022:- Criminal Original Petition filed under Section 439 of Cr.P.C. praying to enlarge the petitioner/Accused-6 on bail in Calendar Case in 203 of 2022 pending on the file of Principal Special Court under EC and NDPS Act, Chennai in Crime No.81 of 2022 of the respondent Police and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in Crl.O.P.No.32147 of 2022:- Criminal Original Petition filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail concerned in



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C.C.No.203 of 2022 pending on the file of Principal NDPS Court, Chennai in Crime No.81 of 2022 on the file of the respondent Police on such terms and conditions as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in Crl.O.P.No.324 of 2023:- Criminal Original Petition filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in pending investigation in Crime No.81 of 2022 on the file of the Respondent Police.

For Petitioner
in Crl.O.P.No.32144 of 2022 : Mr.R.Surya Prakash

For Petitioner
in Crl.O.P.No.32147 of 2022 : Mr.S.Jayaprakash

For Petitioner
in Crl.O.P.No.324 of 2023 : Mr.D.Padmanabhan

For Respondent in all Crl.O.Ps : Mr.A.Damodaran
Additional Public Prosecutor

COMMON ORDER

All these Criminal Original Petitions have been filed to enlarge the petitioners on bail in Crime No.81 of 2022 pending investigation before the respondent.

2. The case of the prosecution is that on 17.03.2022, the respondent Police received a secret information that near Trustpuram Playground, the accused persons A5 and A6 are selling drug tablets. On receipt of the same, a



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team of Police went to the place of occurrence and apprehended A5 and A6. On enquiry, they informed their address and after following the procedure as contemplated under Section 50 of NDPS Act, seized the contrabands viz, Nitroxit-10 mg, Alpraxafe tablets, Unwanted Kit and Tydol tablets from A5 and A6. Based on their confession, the accused A7 was arrested and remanded to judicial custody. The 1st accused along with the other accused were running a Medical Shop in the name of “Shri Ram Medicos” in Haryana District. She is a main supplier and she supplied medicine all over India in the name of “Voiz Med Pharma Pvt.Ltd”. The second accused purchased drugs from the 7th accused through India Mart online company. The 7th accused delivered the drugs through courier. Hence, the complaint.

3. The learned counsel for the petitioner in CrI.O.P.No.32144 of 2022 submitted that the petitioner is arrayed as A6. His father is working as a ticket collector in theatre. While being so, on 13.03.2022, the petitioner was illegally detained by the Inspector of Police, K.K.Nagar and thereafter, he was released on the very same day. Again, on 15.03.2022, the respondent called the petitioner's father and enquired about the petitioner. In fact, the respondent visited the house of the petitioner and arrested him as if he was in possession of



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the alleged contraband and selling the contraband in the bike. The petitioner is aged about only 22 years. He does not know how to ride motor vehicle and he does not possess any motor vehicle. A false case has been foisted as against the petitioner herein. The other accused persons did not even whisper about the overt-act of the petitioner and his involvements in the alleged crime. The co-accused one Poongundran, who is arrayed as A3, confessed only about the involvement of one Kishore Kumar, who is arrayed as A7, who regularly purchase the contraband for selling to other persons for commercial purpose. In fact, the confession statement of the petitioner revealed that his father one Gopinath died. Whereas, his father is very much alive and as such the entire confession statement is false and recorded as per the wish of the respondent. He further submitted that the petitioner was arrested and remanded to judicial custody on 17.03.2022. Now, the entire investigation has been completed and as such there is a change of circumstances and prayed for grant of bail to the petitioner.

4. The learned counsel for the petitioner in CrI.O.P.No.32147 submitted that the petitioner is arrayed as A4. He is a B.E. graduate. He is an employee and he was not aware of the proposition of medicine which was



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handled by his employer. Even according to the case of the prosecution, there was no recovery of any contraband from him. Only for the statistical purpose, he has been falsely implicated in this case. He also submitted that the petitioner was arrested and remanded to judicial custody, on 17.03.2022. Hence, he prays for grant of bail to the petitioner.

5. The learned counsel for the petitioner in CrI.O.P.No.324 of 2023 submitted that the petitioner is arrayed as A2. The petitioner was employed in Amway and she had never involved in any crime as alleged by the prosecution. Only on the confession statement of A5 and A6, the petitioner has been falsely implicated as an accused. Further, even according to the case of the prosecution, the contraband which was seized from the petitioner, is not a commercial quantity. She was arrested and remanded to judicial custody, on 17.03.2022. Hence, he prays for grant of bail to the petitioner.

6. Per contra, the learned Additional Public Prosecutor filed separate counters and it revealed that there are totally 7 accused in which the petitioner in CrI.O.P.No.32144 of 2022 is arrayed as A6, the petitioner in CrI.O.P.No.32147 of 2022 is arrayed as A4 and the petitioner in CrI.O.P.No.324 of 2023 is arrayed



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as A2. As per the secret information, the respondent came to the knowledge that A6 and A7 were selling drug tablets in the place of occurrence. As identified by the informer, A6 and A7 were searched after complying with the provisions as contemplated under the NDPS Act. A6 was found in illegal possession of 150 tablets of Nitravet and 100 tablets of Tydol. Based on the confession statements of A6 and A7, A2 to A5 were searched and they were found in possession of 4620 tablets of Nitravet, 2220 tablets of Tydol, 145 tablets of Unwanted kit, 130 tablets of Alprasaft. Therefore, all the petitioners were found in possession of contraband which is a commercial quantity. Therefore, the Section 37 of NDPS Act is applicable in this case and the burden is on the petitioners to make out the case to satisfy this Court that there are reasonable grounds to believe that they are not guilty of such offences. Hence, he vehemently opposed grant of bail to the petitioners.

7. As per Section 54 of NDPS Act, it contemplates that unless and until the contrary is proved, it may be presumed that the accused have committed the offence. The petitioners also failed to fulfill the twin conditions as contemplated under Section 37 of NDPS Act. The operative part of this provision is in negative form prescribing the enlargement of bail to any person accused of



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commission of offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application and the second is that the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

8. The expression “reasonable grounds” means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the offences. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, all the petitioners were found in possession of the contraband which is a commercial quantity. Therefore, the bar under Section 34 operates as against the petitioners.

9. In view of the above facts and circumstances and the gravity of the offences committed by the petitioners and that there is no change of circumstances after the previous dismissal orders passed by this Court, this Court is not inclined to grant bail to the petitioners. Accordingly, these Criminal



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Original Petitions are dismissed.

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Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. The Inspector of Police,
R-2, Kodambakkam Police Station,
Chennai-600024.
2. The Public Prosecutor,
High Court, Madras.

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