



Cr.L.O.P.No.1017 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

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THE HON'BLE MR. JUSTICE **C.V.KARTHIKEYAN**

**Cr.L.O.P.No.1017 of 2024**

Mohammed Sulthan @ Md Sultan Sheriff B.R ...petitioner

Vs.

State represented by  
The Inspector of Police,  
Sipcot Police Station,  
Ranipet District.  
Crime No.503 of 2023

...Respondent

**PRAYER:** Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in Crime No.503 of 2023 on the file of the respondent Police.

For petitioner : Mr.M.Sathish Kumar  
For Respondent : Mr.L.Baskaran  
Government Advocate (crl.side)

**ORDER**

The petitioner who was arrested and remanded to judicial custody on 17.12.2023 for the offences registered by the respondent Police under



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Sections 8(c) & 22(b) of NPDS Act r/w 328 of IPC in Crime No.503 of 2023, seeks bail.

2.The case of the prosecution is that on 16.12.2023, they had received information about the sales of the drug namely Tapentadol from the petitioner. It was also stated that the purchaser/defacto complainant felt ill.

3.The learned counsel for the petitioner stated however that the petitioner had completed D.Pharm and also completed practical training at Government Hospital, Arcot and was a registered Pharmacist in Tamil Nadu Pharmacy Council. The bail application before the Sessions Court was dismissed.

4.The learned counsel for the petitioner raised one point stating that the drug Tapentadol is not a scheduled drug under the Narcotic Drugs and Psychotropic Substances Act, 1985. In this connection, the learned counsel placed reliance on the order of a learned Single Judge of Madurai Bench of this Court in CrI.O.P(MD).Nos.12974 and 15588 of 2023 (Madhankumar and Mohammed Abu Vs. The State ) dated 27.09.2023 wherein, the learned Single Judge had observed as follows:



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*'3.Tapentadol is an opioid analgesic and it is not covered under Narcotic Drugs and Psychotropic Substances Act, 1985.'*

The learned counsel also placed reliance on yet another order of a learned Single Judge of this Court in CrI.O.P.No.26184 of 2022 (V.Venkatesan @ Venkatesh Vs. the State) dated 08.11.2022, wherein the learned Single Judge had also observed as follows:

*“Tapentadol Hydrochloride Tablet is not mentioned in the list of schedule NDPS Act”*

5.The learned Government Advocate (crl.side) expressed anguish at the Drug Inspector, Arcot as he was not coming forward to assist the Investigating Officer or the office of the Public Prosecutor in clarifying this particular statement namely whether Tapentadol is a scheduled drug under the NDPS Act or not. It is stated that though information had been given by the Drug Inspector, Arcot, to render assistance, the said Drug Inspector refused to come and asked about the Court summons for him to



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come over and to give that particular information. This is dereliction of duty by the Drug Inspector, Arcot who should be ready to assist the prosecution particularly when the case involves interpretation of a particular drug. In this case, whether Tapentadol is a scheduled drug under the NDPS Act is to be clarified by the Drug Inspector. Failure to render such assistance, leaves this Court with no other option but to order in line with the afore stated two orders namely Tapentadol is not covered under the NDPS Act.

6. In view of this conclusion, this Court is inclined to grant bail to the petitioner with subject to the following conditions.

7. Accordingly, the petitioner is ordered to be released on bail on executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties, each for a like sum to the satisfaction of the learned District Munsif cum Judicial Magistrate, Ranipet District 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.



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[b] the petitioner shall report before the respondent Police, everyday at 10.30 a.m., until further orders.

[c] the petitioner shall not abscond either during investigation or trial.

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court 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 Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

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

8. A copy of this order may be forwarded to the Superintendent of Police, Ranipet, to use his office to impress upon the authorities holding higher post than the Drug Inspector about the non-cooperation by Tmt.Saranya, the said Drug Inspector to the prosecution to establish the case in the Court of law. Rendering assistance is a sacrosanct duty of every public servant. Owing to non-cooperation by this Drug Inspector,



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the Investigating Officer was not able to present the case effectively before this Court.

29.02.2024

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To

1. The District Munsif cum Judicial Magistrate, Ranipet District.
2. The Central Prison, Vellore.
3. The Inspector of Police,  
Sipcot Police Station,  
Ranipet District.
4. The Public Prosecutor, High Court of Madras.



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**C.V.KARTHIKEYAN. J.**

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