



Crl.O.P.No.1312 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2024

PRONOUNCED ON : 23.02.2024

CORAM

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

Crl.O.P.No.1312 of 2024

R.Ashokan

... Petitioner

Vs.

State represented by
The Inspector of Police,
PEW Ambattur.
Crime No.775 of 2023

... Respondent

PRAYER: This Criminal Original Petition filed under Section 439 of Cr.P.C., prayed to enlarge the petitioner on bail in Crime No.775 of 2023 on the file of the respondent.

For Petitioner : Mr.N.Chandrasekharan,
Senior Counsel,
For Mr.E.Vijay Anand

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)



Crl.O.P.No.1312 of 2024

WEB COPY

ORDER

The petitioner / accused in Crime No.775 of 2023 registered for the offences punishable under Sections 8(c) and 21(c) of the Narcotic Drug and Psychotropic Substances Act, 1985 and remanded to custody on 03.11.2023 seeks bail.

2.It is the case of the prosecution that on receiving information, the respondent had intercepted the accused, who was standing at Iyyapakkam Mani Road, ICF Colony bus stop with a shoulder bag which contained 150 bottles of 100 ml each of Choco+ syrup.

3.It is the contention of the learned Senior Counsel for the petitioner / accused that the provisions of the NDPS Act, operates in addition to the provisions of the Drugs and Cosmetics Act, 1940. In this connection, the learned Senior Counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in ***(2014) 13 SCC 1, Union of India and Another Vs. Sanjeev V. Deshpande*** and the judgment of the Hon'ble Supreme Court



Crl.O.P.No.1312 of 2024

reported in *(2019) 2 SCC 466, State of Punjab Vs. Rakesh Kumar*. The learned Senior counsel further relied on Rules 13 and 14 of the NDPS Act which provide that samples taken from the seized contraband should be produced before the trial Court within a period of fifteen days. He further stated that, in this case, the contraband was seized on 03.11.2023 and had been produced before the trial Court only on 18.01.2024 after 77 days. The learned Senior counsel further pointed out that the samples were sent to the Forensic Science Laboratory only on 24.01.2024 after 84 days from the date of seizure.

4.It had also been pointed out by the learned Senior counsel that the drugs license under the Drugs and Cosmetics Act, 1940 had been granted to the petitioner for the period from 22.06.2017 to 21.03.2022 and it had been renewed on 19.06.2022 for the period from 22.06.2022 to 21.06.2027. It is thus contended that, at the time of arrest, the petitioner who was working as a pharmacist had a right to possess the contraband, which was seized, since there was valid license to sell the same. It had also been stated that the Central Drugs Standard Control Organization (CDSCO) had notified the list of drugs prohibited for manufacture and sale by gazette notification under



Crl.O.P.No.1312 of 2024

Section 26(A) of Drugs and Cosmetics Act, 1940 by the Ministry of Health and Family Welfare and it had been contended that Choco+ syrup had not been prohibited for manufacture or sale by the notification. It had been further stated that Choco+ syrup had been classified as Schedule H1 drug and therefore can be sold in retail on proper prescription by a registered Medical Practitioner. It had been further stated that Choco+ syrup contains fixed dose combination of Codeine Phosphate 10mg and Triprolidine HC 1.25 mg and is in the approved list from 18.02.2003 issued by CDSCO for symptomatic treatment of dry cough. The learned Senior Counsel further pointed out that there are a number of cough syrups manufactured by various pharmaceutical manufacturers. It had thus been stated by the learned Senior counsel that the petitioner is entitled for bail.

5.The learned Government Advocate (Crl. Side) for the respondent, however, disputed the contentions and stated that the total quantity of contraband seized was 15 litres in 150 bottles each containing 100 ml of Choco+ syrup, which is equivalent to 15 Kgs and pointed out that more than 1 Kg of codeine is commercial quantity. It had also been stated that proper procedure had been followed at the time of arrest of the accused



Crl.O.P.No.1312 of 2024

and also seizure of the contraband. It had also been stated that immediately the accused and the seized contraband and also the properties had been produced before the learned Judicial Magistrate – II, Ambattur on the same day, 03.11.2023. The accused was then remanded to judicial custody. It had also been stated that on 18.01.2024, the seized properties had been produced before the Principal Special Judge, Special Court for EC Act Cases, Chennai and thereafter, on 24.01.2024, the samples had been sent to Forensic Science Laboratory for chemical analysis. It had been further stated by the learned Government Advocate (Crl. Side) that Section 80 of NDPS Act, 1985 provides that the provisions of the Act shall be in addition and not in derogation of the Drugs and Cosmetics Act, 1940 or the Rules.

6.This Court had also perused the Case Diary relating to FIR in Crime No.775 of 2023 registered against this petitioner under Section 8(c) r/w 21(c) of NDPS Act by the respondent.

7.It is seen that an information had been received from the Drugs Inspector, Madhavan Range, Ambattur, in-charge in the office of the Assistant Director of Drugs Control, Zone – V, Chennai – 6, on 03.11.2023,



Crl.O.P.No.1312 of 2024

that on 02.11.2023, Ambattur (PEW), Chennai had seized 150 bottles of Choco + 100 ml syrup and information was given to the respondent. A perusal of the case diary reveals that the required procedure had been followed at the time of arrest of the accused and seizure of the contraband. It is seen that the accused had been produced before the learned Judicial Magistrate – II, Ambattur for remand on 03.11.2023 itself and the contraband had also been produced before the said Court on 03.11.2023 itself. Thereafter, it had been forwarded to the Special Court for EC Act cases, Chennai. The contention that there has been substantial delay in forwarding the contraband to the Court and in forwarding samples for testing are issues which will have to be taken up during the course of trial. The record show seizure and handing over of the same to the learned Judicial Magistrate – II, Ambattur.

8.In **(2019) 2 SCC 466, State of Punjab Vs. Rakesh Kumar**, it had been very clearly stated that the provisions of NDPS Act, can be applied in addition to the provisions of Drugs and Cosmetics Act, 1940. In that case, the order of the High Court granting suspension of sentence of the accused convicted under NDPS Act by observing that manufactured drugs containing narcotic drugs and/or psychotropic substances if manufactured by a



Crl.O.P.No.1312 of 2024

manufacturer, must be tried, if there is any violation, only under the Drugs and Cosmetics Act, 1940 and not under NDPS Act, had been set aside.

Paragraph No.7 of the judgment is as follows:-

*“7. At the outset it is essential to note the objectives of the two legislations before us i.e. the Drugs and Cosmetics Act, 1940 and the NDPS Act. The Drugs and Cosmetics Act, 1940 was enacted to specifically prevent substandard drugs and to maintain high standards of medical treatment (Chimanlal Jagjivan Das Sheth v. State of Maharashtra [Chimanlal Jagjivan Das Sheth v. State of Maharashtra, AIR 1963 SC 665 : (1963) 1 Cri LJ 621]). The Drugs and Cosmetics Act, 1940 was mainly intended to curtail the menace of adulteration of drugs and also of production, manufacture, distribution and sale of spurious and substandard drugs. On the other hand, the NDPS Act is a special law enacted by Parliament with an object to control and regulate the operations relating to narcotic drugs and psychotropic substances. **After analysing the objectives of both the Acts, we can safely conclude that while the Drugs and Cosmetics Act deals with drugs which are intended to be used for therapeutic or medicinal usage, on the other hand, the NDPS Act intends to curb and penalise the usage of drugs which are used for intoxication or for getting a stimulant effect.**”*



WEB COPY



Crl.O.P.No.1312 of 2024

Emphasis Supplied

9.The contention of the learned Senior Counsel for the petitioner that the petitioner had valid license would not come to the advantage of the petitioner since the seizure was not from the shop but from the accused who was standing in the road.

10. Further, paragraph Nos.13, 14 and 15 of the said judgment are as follows:

*“13. However, we are unable to agree on the conclusion reached by the High Court for reasons stated further. First, we note that Section 80 of the NDPS Act, clearly lays down that application of the Drugs and Cosmetics Act is not barred, and **provisions of the NDPS Act can be applicable in addition to that of the provisions of the Drugs and Cosmetics Act.** The statute further clarifies that the **provisions of the NDPS Act are not in derogation of the Drugs and Cosmetics Act, 1940.** This Court in **Union of India v. Sanjeev V. Deshpande** [**Union of India v. Sanjeev V. Deshpande, (2014) 13 SCC 1 : (2014) 5 SCC (Cri) 496**] , has held that : **(SCC p. 16, para 35)***



“35. ... essentially the *Drugs and Cosmetics Act, 1940* deals with various operations of manufacture, sale, purchase, etc. of drugs generally whereas *Narcotic Drugs and Psychotropic Substances Act, 1985* deals with a more specific class of drugs and, therefore, a special law on the subject. Further, the provisions of the Act operate in addition to the provisions of the 1940 Act.”

14. The aforesaid decision in ***Sanjeev V. Deshpande*** case [***Union of India v. Sanjeev V. Deshpande, (2014) 13 SCC 1 : (2014) 5 SCC (Cri) 496***] further clarifies that, the NDPS Act, should not be read in exclusion to the *Drugs and Cosmetics Act, 1940*. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. In the present case, since the action of the respondent-accused amounted to a prima facie violation of Section 8 of the NDPS Act, they were charged under Section 22 of the NDPS Act.

15. In light of the above observations, we find that the decision rendered by the High Court holding that the respondent-accused must be tried under the *Drugs and Cosmetics Act, 1940* instead of the NDPS Act, as they were found in possession of the “manufactured drugs”, does not hold good in law ”

Emphasis Supplied



Crl.O.P.No.1312 of 2024

WEB COPY

11.It is thus clear that the accused can be proceeded under the provisions of the NDPS Act. Since the contraband seized is commercial the provision under Section 37 of the NDPS Act come into play.

12.There is *prima facie* record produced for possession of commercial quantity of contraband and for seizure of the same.

13.In view of that particular fact, I am not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

23.02.2024

smv

Index : Yes / No

Neutral Citation : Yes / No

Speaking order : Yes / No



WEB COPY



CrI.O.P.No.1312 of 2024

To

- 1.The Inspector of Police,
PEW Ambattur.
2. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.1312 of 2024

C.V.KARTHIKEYAN, J.

smv

Crl.O.P.No.1312 of 2024



WEB COPY



CrI.O.P.No.1312 of 2024

23.02.2024