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Crl.O.P.No.1956 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

Crl.O.P.No.1956 of 2024

DasaradhaRamireddySirigiri,
No.23, Sree Vaishno enclave
Near SNR gardens, Kompally
Medchalmalkajgiri District,
Secundarabad, Telangana – 500 014.

Presently confined at
Central Prison, Puzhal, Chennai – 600 066.

.. Petitioner

Vs.

Union of India through
Intelligence Officer,
Narcotic Control Bureau,
Chennai.

.. Respondent

Prayer: Criminal Original Petition filed under Section 439 of the Code of Criminal Procedure read with Section 37 NDPS Act, praying to release the petitioner / accused on bail relating to NCB F.No.48/1/18/2023-NCB/MDS on the file of the respondent Intelligence Officer, NCB, Chennai.

For petitioner	:	Mr.B.Kumar Senior Counsel for Mr.Aravind Jayakar
For Respondent	:	Mr.N.P.Kumar



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Special Public Prosecutor

ORDER

This Criminal Original Petition has been filed to release the petitioner on bail relating to NCB F.No.48/1/18/2023-NCB/MDS on the file of the respondent Intelligence Officer, NCB, Chennai.

2.The case of the prosecution is that on 16.10.2023 at about 11.00 hours an Intelligent Officer NCB, Chennai received reliable information that a parcel booked under tracking No.H39185868 with sender address as Sargas Life Sciences Pvt. Ltd., Plot No.78/79, 2nd Floor, Sikh Road, Secunderabad – 9 and receiver address as Subash, Green Pharma Private Limited, 3H/142, Kamarajar Street, Nazarathpettai, Chennai – 600 123, by way of courier at M/s.DTDC Courier, Sriperumbudur, Chennai and suspected to be containing suspicious drug and requested to take action and accordingly, they reached the courier office along with the witnesses and examined the parcel. At that time, they seized medium sized brown carton box mentioned as 'Zenomed Health Care Pvt. Ltd' pasted with sender's address as 'Sargas Life Sciences Pvt. Ltd., Plot No.78/79, 2nd Floor, Sikh Road, Secunderabad – 9' and receiver address as Subash, Green Pharma Private Limited, 3H/142, Kamarajar Street, Nazarathpettai,



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Chennai – 600 123, and found 3.150 kgs parcel box and found that numerous small white and orange coloured carton boxes mentioned as NRx Tramadol Hydrochloride & Acetaminophen tablets sensotram. On counting, it was found in 25 Nos. in total. On checking all the 24 boxes found to be containing the same kind of 10 strips of tablets in each box and each strip having 15 tablets of Tramadol Hydrochloride & Acetaminophen. Total number of tablets in one box is 150. Therefore, the total tablets comes to 3750. Hence, the case.

3.The learned counsel for the petitioner would contended that the respondent Police have registered a false case against the petitioner for the offences under Section 8(c) r/w 22(c), 28 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, and he was arrested and remanded to judicial custody on 20.10.2023. In fact, the petitioner is the Managing Director of the company viz., M/s.Sargas Life Sciences Pvt. Ltd., Plot No.78/79, 2nd Floor, Sikh Road, Secunderabad – 9, Hyderabad, Telangana. The said company has a license under the provisions of Drugs and Cosmetics Act, 1940, to sell the medicines as a wholesale seller. The company is entitled to stock, keep in possession medicines which fall under the Schedule to the Drugs and Cosmetics Act, 1940. The



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respondent Department alleged to have recovered certain tablets alleging to be NRx Tramadol Hydrochloride & Acetaminophen tablets sensotram from M/s.DTDC courier near Sriperumbudur. The allegation of the respondent Department appears to be that the petitioner has sent the drugs to the company who has no license to deal with the drugs and cosmetics under Drugs and Cosmetics Act, 1940 and NDPS Act.

4.The petitioner is the bonafide dealer in pharma drugs is not in dispute. Under the license he is entitled to deal with all the medicines mentioned in the Schedule to the Drugs and Cosmetics Act, 1940. The petitioner has purchased the medicine with proprietary name SENSOTRAM. This pharma product has ingredients of Tramadol hydrochloride and acetaminophen in a certain ratio. This medicine is prescribed to relieve pains with acute pain on account of various causes. It is only the retailer when he dispenses with the medicine must insist upon prescription from a Registered Medical Practitioner before giving medicine to intended patient as per the advice of the Doctor. The petitioner purchases the tablets to sell them wholesale from an accredited securing agent namely Galaxy Lifesciences, Puducherry and manufacturer of the drug being ZenoMed Healthcare Private Limited,



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Villupuram, who are licensed to manufacture this sensotram and other pharmaceutical drugs. The petitioner received mail from Green Signal Pharma Pvt. Ltd, and also mentioned the license number and GST Number of the above said company and further they also remitted a sum of Rs.16,240/- for the above said tablets of sensotram, the medicine for pain. When the said tablets arrived at courier office at Chennai from Hyderabad, it was intercepted by the NCB Officers at Chennai. The petitioner was called for an enquiry at Hyderabad at his office and after recording his statement, when he was brought to Chennai, arrested and remanded to judicial custody. The petitioner has not committed any offence and he only sold the medicines to the licensed retail seller. He is in custody from 20.10.2023 and therefore he prayed to enlarge the petitioner on bail.

5.The learned counsel for the petitioner also would contend that the petitioner is entitled to default bail under Section 167(2), since the respondent have not filed any charge sheet on the expiry of the statutory period and also he relied upon the judgment of the Hon'ble Supreme Court in ***M.Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence***, reported in ***(2021) 2 SCC 485***.



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6.The learned Special Public Prosecutor for the respondent would contend that based on the specific information received on 16.10.2023, the respondent seized the contraband through mahazar and thereafter issued summons to the petitioner and he appeared and also admitted his guilt in procuring for the illicit trafficking of 3750 numbers of Tramadol Hydrochloride & Acetaminophen tablets (total 25 boxes, each box containing 10 strip and in each strip 15 tablets). Based on his voluntary confession statement dated 19.10.2023, incriminating documents and material objects were seized on 19.10.2023 and he was arrested on 19.10.2023 and remanded to judicial custody on 20.10.2023. The petitioner violated the license condition of “Point No.3(ii) No Sale of any drug shall be made to a person not holding the requisite license to sell, stock or exhibit for sale or distribute the drug”. The petitioner has sold the medicine to a person who does not have a valid license to purchase / stock / sell / exhibit the medicine. The address in the parcel mentioned as Sargas Life Sciences Pvt Ltd at Plot No.78/79, 2nd Floor, Sikh Road, Secundrabad – 9 whereas the address in the license mentioned as H.No.8-5-80/S3, Ground Floor, Shop No.3, Jalaram Towers, Mallikarjuna Colony, Road No.01, Old Bowenpally Village, Balanagar Mandal,



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Medchal District, Telangana. Therefore, the petitioner intentionally acted against the Drugs and Cosmetics Act, 1940 and Narcotic Drugs and Psychotropic Substances Act, 1985. The transaction was authorized completely through the petitioner through his own e-mail and whatsapp. The petitioner also failed to produce the license and the GST document of the receiver. The seized contraband is a commercial quantity and the petitioner failed to satisfy the conditions of Section 37 of NDPS Act. Therefore, the petitioner is not entitled to grant bail and the petition is liable to be dismissed.

7. In support of his arguments, the learned Special Public Prosecutor also submitted the following judgments:

(i) Union of India Vs. Ajay Kumar Singh @ Pappu, 2023 (0) Supreme (SC) 285;

(ii) State of Punjab Vs. Rakesh Kumar, 2019 (2) SCC 466;

(iii) Union of India & Another Vs. Sanjeev V. Deshpande, 2014 (13) SCC 1 and

(iv) Rajpal @ Raju Vs. State of Punjab, 2020 (0) Supreme (P&H) 1584.

8. This Court heard both sides and perused the records.



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9. In this case, the petitioner was arrested on 20.10.2023 and the contraband involved in this case is commercial quantity. According to the petitioner, the prosecution has not completed the investigation and failed to file final report within time, thereby he is entitled to mandatory bail under Section 167(2) of CrPC. The learned counsel appearing for the petitioner also relied the judgment in ***M.Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence***, reported in ***(2021) 2 SCC 485***, wherein the Hon'ble Supreme Court in paragraph Nos.15 & 17.7 has held as follows:

“15. Based on the abovementioned principles, the majority opinion in Uday Mohanlal Acharya held that the accused is deemed to have exercised his right to default bail under [Section 167\(2\)](#), CrPC the moment he files the application for bail and offers to abide by the terms and conditions of bail. The prosecution cannot frustrate the object of [Section 167\(2\)](#), CrPC by subsequently filing a chargesheet or additional complaint while the bail application is pending consideration or final disposal before a Magistrate or a higher forum. Accordingly, this Court granted relief to the appellant- accused [in that case](#).

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under [Article 21](#) promising protection of life and personal



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liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the threeJudge Bench of this Court in [Rakesh Kumar Paul v. State of Assam](#), (2017) 15 SCC 67, which laid down certain seminal principles as to the interpretation of [Section 167\(2\)](#), CrPC though the questions of law involved were somewhat different from the present case. The questions before the threeJudge Bench in [Rakesh Kumar Paul](#) were whether, firstly, the 90 day remand extension under [Section 167\(2\)\(a\)\(i\)](#) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under [Section 167\(2\)](#) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90 day limit is only available in respect of offences where a minimum ten year imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the Court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows:

'29. Notwithstanding this, the basic legislative intent of completing investigations within twentyfour hours and also within an otherwise timebound period remains



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unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that timelimits have been [laid down by](#) the legislature...

32...Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.

41.We take this view keeping in mind that in matters of personal liberty and [Article 21](#) of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court



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and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.”

Therefore, the Courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in [Article 21.](#)”

10. On a careful perusal of the above judgment, it is clear that if charge sheet is not filed on the date of expiry of the limitation, the petitioner is entitled to default bail. Whereas, in this case the learned counsel for the respondent brought to the knowledge of this Court that on the date of expiry of the limitation, the petitioner has not filed any application before the Trial Court and he only filed application before this Court and thereafter, the charge sheet was filed before the Trial Court while pending application before this Court. Therefore, the petitioner is not entitled to the benefit under Section 167(2) of CrPC. In this case it is admitted that though the respondent has not filed any charge sheet on the expiry of the limitation period, the petitioner has not filed any application before the Trial Court for default bail and the bail petition was pending before this Court. Therefore, the arguments advanced by the learned



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counsel for the petitioner is not acceptable one, since after the expiry date of the limitation period and before filing charge sheet, no application for statutory bail was filed before the Trial Court.

11.The learned Special Public Prosecutor would contend that the petitioner has not filed any bail petition after lapse of the period of limitation and thereby he is not entitled to the benefit of Section 167(2) of CrPC and the contraband involved in this case is commercial quantity, thereby the petitioner is not entitled to bail. He also relied the following judgments:

(i)Union of India Vs. Ajay Kumar Singh @ Pappu, 2023 (0) Supreme (SC) 285;

(ii)State of Punjab Vs. Rakesh Kumar, 2019 (2) SCC 466;

(iii)Union of India & Another Vs. Sanjeev V.Deshpande, 2014 (13) SCC 1 and

(iv)Rajpal @ Raju Vs. State of Punjab, 2020 (0) Supreme (P&H) 1584.

12.On a careful perusal of the above said judgments, it is clear that as far as grant of bail in respect of commercial quantity is concerned, the petitioner has to satisfy the twin conditions under Section 37(1)(b)(2) of



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the NDPS Act and also no person accused of offence involving trade in commercial quantity of narcotics is liable to be released on bail, unless the Court is satisfied with there are reasonable grounds and that he has not likely to be committed any offences of bail. In the case on hand also the petitioner has no previous antecedents and he is having license to sell the drugs and the allegation leveled as against the petitioner is that he supplied the material to the non-licensed person for retail sale. According to the petitioner, through online they produced the copy of the license and GST number and therefore, it has to be decided through the Trial.

13.Considering the rival submissions on both sides that the petitioner is a license holder, the petitioner is in judicial custody from 20.10.2023 and the petitioner has no any previous cases and the fact that whether the receiver of the medicine had license or not has to be tested through trial and also considering that the conditions of Section 37 of NDPS Act is complied with and considering that investigation was completed, this Court is inclined to grant bail to the petitioner subject to the certain conditions.

14.Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand**



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only) with two sureties, each for a like sum to the satisfaction of the Principal Special Court under EC & NDPS Act, Chennai, and on further conditions that :-

[a] the petitioner shall report before the respondent Police on every working day at 10.30 a.m. until further orders;

[b] the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

[c] the petitioner shall not leave India without the previous permission of the Court;

[d] the petitioner shall not abscond 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



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under Section 269 B.N.S.2023.

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Index : Yes / No
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Neutral Citation : Yes / No

P.DHANABAL, J.

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To

- 1.The learned Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
- 2.The Central Prison,
Puzhal, Chennai – 600 066.
- 3.The Public Prosecutor,
Madras High Court, Chennai.

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