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Crl.O.P.No.2178 of 2024

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Reserved on	13.03.2024
Pronounced on	04.04.2024

G. CHANDRASEKHARAN, J.

This Criminal Original Petition is filed for enlarging the petitioner on bail pending in C.C.No.42 of 2023 on the file of Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

2.This is the 3rd bail petition. Learned counsel for the petitioner canvasses this petition mainly on the following grounds,

(I) The procedure relating to seizure of Narcotic and Psychotropic substances under Section 52(A) of NDPS Act were not followed.

(ii) Despite the fact that petitioner is in judicial custody from 11.06.2022, trial is not completed.

3.It is submitted that if the procedure contemplated in Section 52(A) of NDPS Act are not followed at the time of seizure and disposal of the contraband, the accused is entitled for acquittal. When he is entitled for acquittal, it is no doubt that he is entitled for bail. In support of his submissions, he produced the following orders,



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(i) **Bail Application No.4125 of 2021** in the case of ***Santosh Pandurang***

Parte Vs. Amar Bahadur Maurya and another of Bombay High Court.

(ii) **Bail Petition No.3718 of 2022** in the case of ***Tamir Ali Vs. Narcotics***

Control Bureau of Delhi High Court.

(iii) ***Benoy Babu Vs. Directrate of Enforcement*** in SLP. (Crl)

No.11644 to 11645 of 2023.

(iv) the judgment of the Hon'ble Supreme Court of India in

Crl.A.No.1610 of 2023 in the case of ***Mohammed Khalid and another Vs. The State of Telangana.***

(v) **Crl.A.No.3191 of 2023** in the case of ***Yusuf @ Asif Vs. State.***

(vi) ***Criminal Petition No.47 of 2024***

4.In reply, learned Government Advocate (Crl. Side) submitted that it is a case of illegal possession of N-alpha-dimethyl-3,4-methylenedioxy-phenyl ethylamine (MDMA) (ECSTAY tablets) Nos.21, weighing 10.15 grams. It is a commercial quantity. The contraband was properly seized from the accused. The question of not following the procedure contemplated under Section 52(A) of NDPS Act cannot be considered at this stage. It is question of fact and requires to be proved through oral and documentary evidence. Thus, he prays for dismissal of this petition.



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5.Earlier bail petition filed in Crl.O.P.No.10270 of 2023 was dismissed on 26.07.2023 by an elaborate order, touching upon the points raised by the learned counsel for the petitioner. The point now to be decided is that, whether petitioner is entitled for bail for not complying the procedure referred under Section 52(A) of NDPS Act.

6.The reading of orders in bail petition in **Bail Application No.4125 of 2021** in the case of *Santosh Pandurang Parte Vs. Amar Bahadur Maurya and another* of Bombay High Court and **Criminal Petition No.47 of 2024** deals with cases of illegal possession of ganja. It is true that, the non compliance of procedure contemplated under Section 52(A) of NDPS Act was the main reason for grant of bail in Criminal Petition No.47 of 2024 and one of the reasons for granting bail to the accused in Bail Application No.4125 of 2021.

7.In **Bail Petition No.3718 of 2022** in the case of *Tamir Ali Vs. Narcotics Control Bureau* of Delhi High Court, the non-compliance of procedure under Section 52(A) of NDPS Act was referred. It was a case where no recovery was effected from the applicant or at his instance. That is the main reason for granting bail.



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8.In the case of ***Benoy Babu Vs. Directrate of Enforcement*** in SLP. (Crl) No.11644 to 11645 of 2023, the appellant Benoy Baby was not a charge sheet accused. Apart from that reason, he suffered incarceration for 13 months and trial has not commenced. Therefore, he was granted bail.

9.The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in **Crl.A.No.1610 of 2023** in the case of ***Mohammed Khalid and another Vs. The State of Telangana*** and **Crl.A.No.3191 of 2023** in the case of ***Yusuf @ Asif Vs. State***, for the proposition that, Hon'ble Supreme Court found that the seizure of contraband without following the procedure under Section 52(A) of NDPS Act cannot be relied and ultimately set aside the conviction.

10.In Criminal Appeal No.633 of 2024 in the case of ***Deshraj Gurjar Vs. State of Rajastan***, all the accused have been convicted and matter was taken in Appeal before the Hon'ble Supreme Court. Hon'ble Supreme Court found that official prosecution witnesses had not supported the prosecution with regard to the manner in which sample was collected. Thus, accused was granted bail. In



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the cases referred in paragraphs 9 and 10 after the trial Court and High Court found the accused guilty, on appreciation of evidence, Hon'ble Supreme Court found that non-compliance of procedures under Section 52(A) of NDPS Act is fatal. That is not the case here.

11.In the case before hand, N-alpha-dimethyl-3,4-methylenedioxy-phenyl ethylamine (MDMA) (ECSTAY tablets) is a commercial quantity. Not a day passed without a report about seizure of narcotic and psychotropic substance in one or other part of India. Psychotropic substance like MDMA tablets have been traded internationally after procuring it from foreign land and selling it across the Country. The main target are the youth of the country. Unless, the trade of narcotic and psychotropic substance are stopped with iron hand, the youth of the Country will get spoiled, never to be redeemed. Unless evidence is recorded and records are examined, it cannot be decided, whether non-compliance of procedure under Section 52(A) of NDPS Act results a miscarriage of justice.

12.It is too early now to release the petitioner on bail, on the sole ground that procedure contemplated under Section 52(A) of NDPS Act were not followed. It is informed that trial has commenced. When that be the case,



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petitioner is directed to co-operate with the Court for the early completion of trial. Respondents are directed to produce the witnesses promptly, ensuring early disposal of the case. This Court finds no merits in the petitioner seeking bail.

13. Accordingly, this Criminal Original Petition is dismissed.

04.04.2024

Index: Yes/No
Speaking/Non speaking order
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To

1. The Principal Special Judge,
Special Court under EC & NDPS Act,
Chennai.
2. The Inspector of Police,
N-4, Fishing Harbour police Station,
Chennai – 600 006.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.CHANDRASEKHARAN.J.,

gd

Pre-Delivery Order in
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