



Crl.O.P.No.2432 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2024

PRONOUNCED ON : 12.03.2024

CORAM

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

Crl.O.P.No.2432 of 2024

Raju

... Petitioner

Vs.

State represented by
The Inspector of Police,
PEW Washermenpet,
Chennai, PEW North.
(Crime No.45 of 2023)

... Respondent

PRAYER: This Criminal Original Petition filed under Section 439 of Cr.P.C., prayed to enlarge the petitioner on bail in C.C.No.668 of 2023 on the file of the respondent.

For Petitioner : Mr.T.S.Sasikumar

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



CrI.O.P.No.2432 of 2024

WEB COPY

ORDER

The petitioner / accused seeks bail in C.C.No.668 of 2023 now pending trial before the learned Principal Special Judge for NDPS Act, Chennai. Originally, the petitioner was arrested and remanded to judicial custody on 10.02.2023 for the offences punishable under Sections 8(c) and 20(b)(ii)(C) of NDPS Act in Crime No.45 of 2023 on the file of the respondent.

2.It is the case of the prosecution that the petitioner was found in possession of 2 Kgs of Ganja Oil.

3.It is the contention of the petitioner that he is a Telugu speaking person and had come to Chennai seeking a job and was apprehended at Chennai Central Railway Station for travelling without a valid ticket and was detained there for two days. It is contended that subsequently the present case had been foisted against him. It had been contended that there has been violation of Section 50(1) of NDPS Act, since the procedures undertaken by the respondent had not been translated in Telugu and that the signature of the person, who had allegedly so translated, was also not found in the notice issued under Section 50(1) of NDPS Act. It had also been stated that the FIR number is found in the mahazar, which was not possible since the FIR was



Crl.O.P.No.2432 of 2024

registered much later in the evening after coming to the police station. It was also contended that the name of the person who had translated the proceedings into Telugu was not appended in the mahazar. It was also stated that the arrest memo which is contended to be written at the spot also contains the crime number. Placing all these facts, it is contended that the petitioner should be granted bail.

4.A counter has been filed on behalf of the respondent, wherein, it had been stated that on secret information received about illegal transport of contraband, the Special Sub-Inspector of Police along with his team went near the railway station at Tondiarpet and found the accused standing in a suspicious manner and caught him and conducted a search and found in his possession 2 Kgs of Ganja Oil worth about Rs.10/- lakhs. The contraband had been seized under cover of seizure mahazar in the presence of witnesses and the accused was arrested and his confession was also recorded. It had been stated that the quantity seized is commercial in nature. It had also been stated that there was an earlier case registered under Section 302 IPC against the accused in Crime No.41 of 2014, which had been registered by the Inspector of Police, Merpattu Police Station, Andhra Pradesh. It had been



Crl.O.P.No.2432 of 2024

further stated that subsequent procedures had been conducted and finally, charge sheet had been filed before the Special Court for EC and NDPS Act, Chennai and the same had been taken cognizance as C.C.No.668 of 2023. It had been reiterated that all necessary procedures had been followed. It had been stated that the petition should be dismissed.

5.The learned counsel for the petitioner stated that the seizure mahazar was prepared at 12.30 in the noon and the First Information Report had been registered at 03.30 in the afternoon. The learned counsel stated that the FIR number was found in the seizure mahazar and therefore, contended that the entire document should be rejected by this Court. It had also been contended that in the notice issued under Section 50(1) of NDPS Act, there has been violation of necessary procedure. Further, it had been stated that the procedures under Section 42 of NDPS Act had also not been scrupulously followed by the respondent. It had been further stated that according to the information received, the person transporting the Ganja Oil would be wearing a white colour shirt with flowers whereas, the accused was wearing a Sandal colour shirt and cotton jeans. It had therefore been stated that the accused had been wrongfully arrested and implicated in the alleged offence.



Crl.O.P.No.2432 of 2024

It had been further stated that the arrest memo had been prepared at 01.30 in the afternoon and also contained the FIR number which had actually been prepared later at 03.30 pm.

6.It had been further stated that a Telugu knowing person is said to have explained the proceedings to the petitioner but the documents do not reveal that there was a Telugu translator and that he had explained all the procedures to the petitioner herein but there was no signature of the said translator in the documents. It was stated that there was no translation at all and the petitioner did not know what was happening at the time of his arrest. The learned counsel for the petitioner therefore stated that the petitioner must be granted bail.

7.The learned Government Advocate (Crl. Side) for the respondent, however, contested each and every point. According to the learned Government Advocate (Crl. Side) all the procedures as stipulated under the NDPS Act had been correctly followed at the time of seizure and arrest. It was contended that there was a Telugu knowing person available and he had translated the procedures to the petitioner and this had been very



Crl.O.P.No.2432 of 2024

clearly stated in all the documents. With respect to the signature of the translator, it is contended that the Investigating Officer can always be cross-examined on this particular aspect. With respect to the FIR number being found in the documents which had been prepared earlier, the learned Government Advocate stated that again these are issues which can be adjudicated only during the course of trial. The learned Government Advocate stated that the seized contraband is commercial in nature and therefore contended that at this stage, bail should not be granted and that the petitioner would be granted all opportunity to defend his case. It had therefore been stated that this petitioner should be dismissed.

8.I have carefully considered the arguments advanced and perused the case diary.

9.A perusal of the records reveal that information had been received by Special Sub-Inspector of the respondent on 10.02.2023 about illegal transport of contraband. This information had been forwarded to the Station House Officer, who had also made an endorsement that the Special Sub-Inspector of Police can proceed as per law. To that extent there has



Crl.O.P.No.2432 of 2024

been compliance of that particular stipulation under the NDPS Act. The said officer had then gone near Tondiarpet Railway Station. Even though it is recorded that the person who would be carrying the contraband would be wearing white colour shirt with flowers, the accused was wearing sandal colour shirt. There is not much difference in the shade of the two shirts. There could have been a mistake in noting down the colour, when viewed from a distance, I would not give much credence to that point raised on behalf of the petitioner.

10.The petitioner was then intercepted and searched. The records reveal that when the accused was intercepted, an option was given to him about the manner in which he should be searched and he had stated that the official who intercepted him could himself conduct the search. This was also noted down in the search notice that the statements had been translated into Telugu and informed to the accused. It had been further recorded that the accused accepted to be searched by the Special Sub-Inspector. Thereafter, the information was given for the reason for arrest. Thereafter, the statement of the accused that he had understood the reason for the arrest had been recorded. It is only thereafter that the arrest report had been prepared. No



Crl.O.P.No.2432 of 2024

doubt the time is given at 13.50 hours. This is the time of the arrest. The preparation of all other documents namely, the arrest report and the seizure mahazar, wherein it had been contended that the FIR number had been given were prepared at the station at the time of registration of FIR. The preliminary search and arrest were done at the time when the accused was initially searched and the Ganja oil seized and arrested. Further documents were prepared at the time the FIR had been registered. These are further steps to be taken namely, arrest of the accused. The time of the arrest had been noted. I find no infirmity in the preparation of the documents as seen from the case diary. These records therefore nullify the arguments put forth by the learned counsel for the accused that since the FIR number was found in the search mahazar and in the arrest memo those documents have to be rejected.

11.To repeat, they only indicate the time when the search was conducted and arrest was effected. The preparation of the documents was when the FIR was registered. Even if the accused wants to challenge all these statements, the proper course for him is to test the evidence of the Investigating Officer during the course of trial. I hold that there are no reasonable grounds to hold that the petitioner had not committed the



Crl.O.P.No.2432 of 2024

offences. Therefore, the petitioner, since he was in possession of commercial quantity of Ganja oil has not satisfied the condition in Section 37 of the NDPS Act. In the counter, it is also specifically stated that the accused is from Andhra Pradesh and there is every possibility of him committing the offence again or absconding. I hold there are no reasonable grounds to hold that the petitioner is not guilty of the offence.

12.The learned counsel for the petitioner placed on record a series of judgments wherein, it had been held that if the FIR number is found in a document prepared earlier to the FIR then, there is ground to raise suspicion over the genuinty of the documents. But in this case, the documents had been prepared at the time when the FIR was registered and only the time of arrest and the time of seizure had been mentioned in those two documents.

13.The following judgments are relied on by the learned counsel for the petitioner,

(i)an order granting bail in CC.No.54 of 2008 in Crl.O.P.No.21211 of 2009, Ananda Velu @ Velu – order dated 02.12.2009.



Crl.O.P.No.2432 of 2024

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(ii)Crl.O.P.No.16681 of 2010, Murugan Vs. State Rep. by the Inspector of Police – order dated 23.07.2010.

(iii)HCP No.798 of 2010, Shanthi Vs. The District Magistrate – order dated 25.08.2010.

(iv)HCP.No.1563 of 2001, Gomathi Vs. The District Collector and District Magistrate, Kancheepuram District at Kancheepuram and another reported in 2002 (1) CTC 669.

(v)Crl.A.No.618 of 2013, Vijaya Vs. State rep. by, the Inspector of Police, N.I.B, Chennai – order dated 01.02.2019.

(vi)Crl.A.No.765 of 2011, Rathinam Vs. The State rep. by the Inspector of Police, K3, Aminjikarai Police Station, Chennai – dated 03.08.2018.

(vii).Crl.A.No.2729 of 2009, Mohandas, Kuttan Achari Vs. State of Kerala – order dated 15.02.2010 (High Court of Kerala).

14.In all these cases, it had been held that if the FIR number is found in any of the documents which had been prepared earlier to the registration of FIR, then a reasonable doubt can be drawn about the genuinty of the documents. But the question to be answered is the time when the



Crl.O.P.No.2432 of 2024

documents in which the FIR number is present had actually been prepared.

That is an explanation which can be given only by the Investigating Officer or by the Officer who actually prepared those documents.

15.At this stage, particularly, taking into consideration the quantity of the contraband seized which is commercial, presumptions can never be drawn.

16.In view of all these reasons, I am not inclined to accede to the contentions raised on behalf of the petitioner. All these contentions can be examined at the time of analysis of the evidence by the learned Trial Judge. Accordingly, this Criminal Original Petition stands dismissed.

12.03.2024

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order : Yes / No



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Crl.O.P.No.2432 of 2024

C.V.KARTHIKEYAN, J.

smv

To

- 1.The Inspector of Police,
PEW Washermenpet,
Chennai, PEW North.
- 2.The Special Court for EC and NDPS Cases, Chennai.
3. The Public Prosecutor,
High Court of Madras.

Crl.O.P.No.2432 of 2024

12.03.2024