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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.10.2024

Delivered on : 29.10.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.4967 of 2024

R.Vadivel

.....Petitioner

Vs.

Union of India, rep. by its
The Intelligence Officer,
O/o.Director of Revenue Intelligence,
27, G.N.Chetty Road,
T.Nagar, Chennai 600 017.

... Respondent

PRAYER: Criminal Original Petition filed under Section 493 of the Criminal Procedure Code, seeking enlargement of the petitioner on bail in C.C.No.103 of 2020 on the file of the Principal Special Judge for EC & NDPS Act Cases at Chennai in R.R.No.15 of 2020 (F.No.DRI/CZU/VIII/48/ENQ-1/INT-06/2020) on the file of the respondent police.

For Appellant : Mr.S.Saravanakumar

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor for DRI Cases

ORDER

The petitioner (A4), who stands arrested and remanded to judicial custody on 13.03.2020 for the offences punishable under Sections 8(c) read with 21(c), 22(c), 28 and 29 of NDPS Act has filed the present Criminal



of the Principal Special Judge for EC & NDPS Act Cases at Chennai in R.R.No.15
of 2020 (F.No.DRI/CZU/VIII/48/ENQ-1/INT-06/2020).

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2. Factual background of the case is as under:-:-

i) Based on a specific information that one R.Vadivel (A4) of Villupuram residing at Jegannathan Nagar, Panampet, Villupuram, was indulging in illicit manufacturing of Tramadol tablets covered under NDPS Act, in huge quantity and transporting the same to one Sai @ Thiyagarajan (A2) of Chennai, through lorry transport, who in turn had intended to hand over the contraband to one A.Faisal Raja (A1), residing at Ayanavaram, Chennai, for the purpose of smuggling them out of Chennai and that on 12.03.2020, one consignment containing the contraband sent vide L.R.10166028, dated 11.03.2020 by Vadivel (A4), was lying at M/s.Lakshmi Cargo Company located at Pariwakkam Main road, Senneerkuppam, Poonamallee and was likely to be collected by Sai @ Thiyagarajan (A2), the officers of Directorate of Revenue Intelligence (DRI), Chennai, proceeded to the said place and contacted Shri.A.S.Ganesh, Branch In-charge of M/s.Lakshmi Cargo company and enquired him relating to the consignment pertaining to L.R.10166028 dated 11.03.2020 and that the said Ganesh had informed that the consignment would be taken delivery shortly by the person concerned at their premises and the same was booked under 'To pay' category.

ii) After sometime two persons namely Sai @ Thiyagarajan (A2) and K.Sirajudeen (A3) approached the branch in-charge and got the formalities done for the clearance of the subject consignment containing the contraband



and when they were about to move with the said contraband/consignment out of the lorry office, they were intercepted by the respondent.

iii) After interception, in the course of the Mahazar proceedings on 12.03.2020 at M/s.Lakshmi Cargo company (a division of M/s.Chakradhara Aerospace and cargo (P) Ltd.) at Pariwakkam Main Road, Heritage Foods Compound, Senneerkuppam, Poonamallee, Chennai, the identities of the two persons were obtained and they introduced themselves as Shri Sai @ Thiyagarajan and K.Sirajudeen and further on enquiring Sai @ Thiyagarajan, he had produced the L.R.No.10166028 dated 11.03.2020.

iv) Initially during enquiry the said Sai @ Thiyagarajan and K.Sirajudeen had informed that the consignment had only medicine/tablets, but on persistent enquiry, they revealed that the consignment was having "Tramadol tablets" a drug covered under NDPS Act. The said persons had informed that they had come to receive it as per their plan with one A.Faisal Raja (A1).

v) On further, persistent enquiry, Sai @ Thiyagarajan informed that accused A1 A.Faisal Raja had placed the order for procuring Tramadol tablets to him and in turn, he along with K.Sirajudeen had placed the order for the same to one R.Vadivel of Villupuram, who manufactured the said tablets and as per their plan with R.Vadivel, both of them had come to take delivery of the said consignment containing the Tramadol tables from the said delivery point; that both of them have knowingly indulged in the smuggling of Tramadol tablets, a drug covered under the NDPS Act in collusion with A.Faisal Raja and R.Vadivel.

vi) Thereafter, the said persons were taken to the office of the D.R.I.,



conducted and statements were recorded from them under Section 67 of the NDPS Act.

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vii) Further in continuation, the officers of the D.R.I., T.Nagar, Chennai, seized a quantity of 22.695 kgs. of substance tablets under the provisions of the Narcotic Drugs and Psychotropic Substances Act 1985 (as amended) in the presence of independent witnesses. The accused admitted that the consignment was transported from Villupuram vide L.R.10166028, dated 11.03.2020, by the accused Sai @ Thiyagarajan and K.Sirajudeen.

viii) Further, on 12.03.2020 based on the statement of other accused, A.Fisal Raja was enquired and statement was also recorded under Section 67 of the NDPS Act wherein he had admitted that 10 years back, he was arrested for having found in possession of 10 kg of Ephridine and he was convicted and fined Rs.3 Lakhs and thereafter before 2 years he got acquainted with Sai @ Thiyagaraj and that one Ahamed Bai @ Kerala Bai had asked him to supply tramadol tablets and that he, in turn, had asked Sai @ Thiyagarajan and K.Sirajudeen to supply tramadol tablets and that earlier they had supplied 50,000 tramadol tablets and he had paid of Rs.4 Lakhs to them and he had received commission of Rs.1 Lakh, thereafter in another occasion he had placed order for one Lakh tablets and received it from them and he had paid a sum of Rs.8 Lakhs to them and received commission of Rs.2 Lakhs, thereafter placed another order with Sai @ Thiyagarajan and K.Sirajudeen for supply of one Lakh tablets and that he had paid of Rs.4 Lakhs as advance and for supply of the same. He further stated that he was in touch with Sai @ Thiyagarajan in



ix) In furtherance of the information, the residential premises of the said R.Vadivel (A4), Villupuram, was searched under a mahazar proceedings dated 12.03.2020 and incriminating documents and three Tramadol tablets were found to have marking "225 DS" on one side and "+" sign on the other side, which were same as that of the tablets that were seized at M/s.Lakshmi Cargo Company, under the provisions of the NDPS Act, 1985, were seized in the presence of independent witnesses and A4 admitted them to be Tramadol tablets.

x) Thereafter, a voluntary statement was recorded under Section 67 of the NDPS from Vadivel (A4) on 13.03.2020 wherein, inter alia, he had admitted that he had colluded with A1, A2, A3 for trafficking of the contraband seized at Chennai and that he had procured raw material and arranged to manufacture of Tramadol tablets and also booked the consignment of Tramadol tablets by L.R.10166028 dated 11.03.2020 at Villupuram to be delivered at Lakshmi Cargo Company, Chennai, and informed Sai @ Thiyagarajan (A2) to collect the same at Chennai and that on earlier two occasions also, he had arranged for manufacturing and transporting of Tramadol tablets for monetary consideration. The fact of A4's active involvement was also corroborated by the voluntary statements recorded under Section 67 of the NDPS Act, 1985 of other accused / A1, A2 and A3 on 12.03.2020 wherein, it has been stated that they were having knowledge about the consignment and their intention to export it out of Chennai.

xi) The Tramadol tablets, as admitted by A4, A1, A2 and A3, are prohibited items and are covered under the Psychotropic Substances and



attracts the penal provisions of NDPS Act, 1985 and thereby, the petitioner was arrested on 13.03.2020 for offences punishable under Sections 8(c) read with 21(c), 22(c), 28 and 29 of NDPS Act and remanded to judicial custody on the same day.

xii) Later, the samples drawn were sent for chemical analysis by the Court to CRCL, Chemical Lab and the test report of the subject tablets by CRCL has also confirmed the presence of "Tramadol Hydrochloride" vide letter Lab.No.CHLCHN/NDPS/1858 & 1859/17.03.2020 dated 20.03.2020. Hence, the complaint.

3. Mr.S.Saravanakumar, learned Counsel appearing for the petitioner would submit his arguments in two fold as under:-

i) The petitioner is an innocent and he has been falsely implicated in this case based on the confession recorded from the other arrested accused. Though the confession statement is alleged to be recorded from the petitioner under Section 67 of the NDPS Act, it is not in consonance with and it does not support the case of the prosecution. There is no other conclusive material to link that the petitioner is the person who had supplied the contraband to the other accused and thereby, the petitioner has made out a reasonable ground for believing that the petitioner is not guilty.

ii) The petitioner is an amputee having lost his left leg below knee and apart from that he is a diabetic and hypertensive and suffering from cataract issue as per the medical report available from the prison authorities. Four and a half years had lapsed from the commencement of the ordeal. The petitioner



has been extending his fullest cooperation for the completion of trial, but, the respondent is not proceeding with the same. Out of 13 witnesses sought to be examined by the prosecution, 7 witnesses had been examined so far. Though PW7 had been examined on 12.7.2024 itself, there is no further progress in the trial even after lapse of a period of three months. The delay that had occurred so far would show the probable time that could be taken for completing the trial. The conduct of the petitioner in extending cooperation for the speedy trial coupled with the fact that he is a physically challenged and suffering from many ailments would show the genuineness on his part and the probability that he would not indulge into any offence of similar nature in the event of his enlargement on bail and thereby, sought for indulgence of this court. He undertakes to abide by any stringent conditions and to co-operate for speedy trial in the event of his enlargement on bail.

4. Per contra, Mr.N.P.Kumar, learned Special Public Prosecutor would submit that there is a prima facie case against the petitioner that to believe that he had indulged in illicit manufacturing and supply of Tramadol tablets covered under NDPS Act, in huge quantity attracting Section 37 of NDPS Act. He would further submit that the delay that had occurred in trial is not on account of prosecution and the other accused are delaying the trial and some of the witnesses have already been cross-examined. Though the petitioner had cross-examined and is cooperating for the trial, the co-accused have not cross examined the witnesses and they have been adopting delaying tactics and thereby, the trial is getting delayed.



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5. In reply, the learned counsel for the petitioner would submit that the petitioner has cross examined all the witnesses, thereby extending his cooperation for conducting the trial and despite that the delay had occurred due to the non-cooperation by the other accused, which cannot be attributed to the petitioner to refuse grant of bail, when he had already undergone more than 4 and a half years incarceration as under-Trial prisoner.

6. It is seen that the present petition is the third one seeking bail. No doubt, the quantity of illicit drugs involved in the case on hand is a commercial quantity. With regard to the offences punishable under the provisions of NDPS Act covering commercial quantity, the petitioner is liable to satisfy the twin conditions of Section 37 of NDPS Act, viz.,

(i) there are reasonable grounds for believing that the accused is not guilty of such an offence; and

(ii) he is not likely to commit any offence while on bail.

7. It is relevant to note that the offence alleged to have been committed by not a single accused. The earlier petitions, which were filed by the present petitioner, being A4 in the case, at a very premature stage, came to be dismissed by this court. Now, more than four and a half years had lapsed after the arrest of the petitioner. The trial had progressed to some extent. Out of 13 witnesses sought to be examined on the side of the prosecution, 6



commenced three months ago but, thereafter, there appears to be no progress in the trial.

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8. A perusal of the materials available on record including the evidence adduced by the witnesses so far examined and their version during the cross examination admitting the probable dissociation of the petitioner with the offence, especially of commercial quantity, discloses some diversion in the case of the prosecution and thereby, this court is of the view that the case of the prosecution as against the present petitioner that Section 37 of NDPS Act would operate against him, becomes a stalemate.

9. Further, more than four and a half years had lapsed from the date of arrest of the petitioner, however, the trial has not been completed, of course, due to the alleged non-cooperation on the part of the co-accused, but, not at the instance of the present petitioner and thereby there is no likelihood of the trial getting completed in the near future.

10. It is also relevant to note that for the offence alleged against the petitioner, he could be imposed with a punishment of rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years. In the present circumstances of the case, viz., the diversion that appears to have taken in the case of the prosecution and the likelihood of the petitioner not indulging into any offence at his old age with many ailments, this

court is of the view that the petitioner, who had already served almost 50% of



the minimum sentence or 25% of the maximum sentence that could be imposed, shall not be incarcerated for such remaining period or till the outcome of the trial, as under-trial prisoner and thereby this court is inclined to grant bail to the petitioner subject to the following conditions:-

(a) The Petitioner is ordered to be released on bail on executing a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a likesum to the satisfaction of the Principal Special Judge for EC & NDPS Act Cases, Chennai;

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety and the learned Special Judge may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner shall appear before the Trial Court on all hearing days at 10.30 am without fail;

(d) the petitioner shall not commit any offences of similar nature;

(e) the petitioner shall not abscond during trial;

(f) the petitioner shall not tamper with evidence or witness during trial;

(g) on breach of any of the aforesaid conditions, the learned Special Judge 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 Special Judge himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala** [(2005)AIR SCW 5560];

(h) If the petitioner adopts any dilatory tactics, the prosecution is liberty to file an application for cancellation of bail.



(i) if the petitioner absconds during bail, a fresh FIR can be registered

under Section 229A IPC.

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11. With the above directions, this Criminal Original Petition is ordered.

29.10.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

ssk.

To

1. Principal Special Judge for
EC & NDPS Act Cases, Chennai.
2. Union of India, rep. by its
The Intelligence Officer,
O/o.Director of Revenue Intelligence,
27, G.N.Chetty Road,
T.Nagar, Chennai 600 017.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Special Public Prosecutor for DRI Cases,
High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.

ssk.

P.D. ORDER IN
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