



WEB COPY



CrI.O.P.No. 10705 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2024

PRONOUNCED ON : 11.07.2024

CORAM

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

CrI.O.P.No. 10705 of 2024

R.Rakesh

... Petitioner/Accused No.2

Vs.

The Union of India
Rep. By the Intelligence Officer
Narcotic Control Bureau
Chennai Zonal Unit
Chennai.
NCB No. 48/01/08/2023

... Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail in connection with the case in NCB
No. 48/01/08/2023 pending investigation on the file of the respondent.

For Petitioner : Mr. N.Manoharan

For Respondent : Mr. N.P.Kumar
Special Public Prosecutor



WEB COPY



Crl.O.P.No. 10705 of 2024

ORDER

The petitioner/A2 in NCB No. 48/01/08/2023 registered under Sections 8(c) read with 20(b)(ii)(A), 21(B), 22(C), 23(C), 28 and 29 of the NDPS Act, 1985 and remanded to custody on 25.06.2023 seeks bail.

2. The first applicant had earlier filed an application seeking bail along with the first accused. That was dismissed on 31.01.2024 in Crl.O.P.No. 27345 of 2023.

3. It is the case of the prosecution that on the basis of specific information, the respondent had seized 10 grams of 2C-B, 3 grams of MDMA, 150 grams of THC, 156 grams of THC (viscous liquid), 168 grams of Ganja, 1 gram of Cocaine, 7 grams of LSD (double design), 20 grams of LSD (single design and no design) at K. R. Engineering Works / K.R. Kwaliti Racks at Chinnavedampatti, Coimbatore on 22/23.06.2023. They had also arrested three accused including the petitioner herein. Further seizures were made including 57 grams of Ganja, 3 grams of Cocaine at Sub-Post office, Rathinapuri, Coimbatore and 100 Bolts of LSD (1.08 grams) at SubPost Office, Thiruverkadu, Chennai and 900 grams of Ganja from parcels



CrI.O.P.No. 10705 of 2024

at Post offices which had been received by A1 from US, Canada and France and from one parcel sent by A1 to a resident in Chennai. 3. It is the further case of the prosecution that on receipt of information, after following due procedure under Section 42(2) of NDPS Act and filing report under Section 57 of NDPS Act, recovery had been made and the accused had been arrested.

4. It is the case of the learned counsel for the petitioner that the respondent had not complied with the stipulations under Section 42(2) of the NDPS Act 1985 relating to receipt of information that he should, within 72 hours, send a copy thereof to his immediate official superior. It is also contended that there has been violation of Section 57 of the NDPS Act 1985 which relates to arrest and seizure namely that when there is arrest or seizure, within 48 hours, after such arrest or seizure, a full report of such arrest of seizure with all particulars shall be forwarded to the immediate official superior by the person making such arrest or effecting such seizure.

5. Section 42 (2) of the NDPS Act, 1985 and Section 57 of the NDPS Act, 1985 are as follows:-



CrI.O.P.No. 10705 of 2024

***“42. Power of entry, search, seizure
and arrest without warrant or authorisation.—***

(1)

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

“57. Report of arrest and seizure.—
Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.”

6. These arguments had been advanced in the earlier application and by a detailed order, this Court had rejected both the contentions. However, the said arguments have been once again advanced. This necessitated the Court to call for the entire records from the respondent. The records have also been produced. As a matter of fact, the material parts of



CrI.O.P.No. 10705 of 2024

the records relating to compliance of the provisions under Section 42(2) of NDPS Act and of Section 57 of NDPS Act had been furnished to the Court and also the petitioner even when the earlier application seeking bail was heard.

7. The primary contention of the learned counsel for the petitioner was that the Intelligence Officer, NCB Chennai, who was at Coimbatore, had forwarded information report under Section 42(2) of the NDPS Act 1985 from Coimbatore on 22.06.2023, in the morning at 10.30 a.m., to the Superintendent, NCB Chennai. It was contended that no further directions had been received from the Superintendent, NCB, Chennai and therefore, there has been serious violation of the provision under Section 42(2) of NDPS Act.

8. A perusal of the records however prove otherwise. The Intelligence Officer, NCB, Chennai, who was camped at Coimbatore, had forwarded an information report under Section 42(2) of the NDPS Act 1985 stating that on that date, on 22.06.2023, he had received information from reliable sources that two persons and giving the names which included this



CrI.O.P.No. 10705 of 2024

petitioner and also the first accused, are indulging in tracking considerable quantities of LSD, Hydroponic Ganja, Cocaine, Gummy bears (dipped in THC distillate), Hashish oil, MDMA and 2 C-B by darknet and have stored the above mentioned drugs secretly at the premise of K.R.Engineering Work / K.R.Kwality Racks at Chinnavedampatti, Coimbatore, where one of the named accused/A-1 was working as Manager and the petitioner R.Rakesh had recently joined. The information further revealed that they were both indulging in retail sale of these drugs to various customers all over India through darknet and using India post or various courier agency for physical delivery. The information further revealed that both the named individuals including this petitioner would be available at the address in the afternoon and if the premise is searched, it will lead to seizure of specific quantity of above mentioned drugs and also of drug containing postal/ courier parcels all over India.

9. This information which had been received had been reduced in writing giving the names of the probable persons, who were in possession of the drugs, the names of the drugs in which they were dealing, and the source from which they have obtained the drugs, the place at which the drugs were stored, the manner in which the drugs were distributed and the probable time



CrI.O.P.No. 10705 of 2024

when the named individuals would be available at the address.

10. Any information received, as stipulated under Section 42(2) of the NDPS Act 1985, will have to be further informed to the immediate Official Superior within 72 hours. This information was communicated to the Superintendent, NCB, Chennai, who is the superior Official by the Intelligence Officer and the following noting had been made by the Intelligence Officer at Coimbatore:

“discussed the above information over phone with Superintendent, NCB, Chennai, who directed to take action as per NDPS Act 1985. ”

11. A perusal of the records reveal that the Superintendent had also made the following noting when the information was forwarded to him:

“received telephonic information, further discussed with zonal Director and as per Direction, Shri Akshay Hunurkar is hereby directed to Act as per NDPS Act.”



CrI.O.P.No. 10705 of 2024

WEB COPY

12. All the endorsements were on the same date / 22.06.2023.

Thus the records reveal that within the period of 72 hours, the Officer, who received the information, namely, the Intelligence Officer, who was camped at Coimbatore, had forwarded in writing the information to his immediate Superior Officer, Superintendent, NCB and noted down the instruction and the Superintendent also noted down the instructions he had issued which was issued after he had discussed with the Zonal Director. It is thus seen that the grievance of the petitioner about non compliance of Section 42(2) of NDPS Act is only a vain argument put forward without any basis. As a matter of fact, the records have been forwarded even to the petitioner since the complaint had been filed before the competent Court seeking cognizance to be taken as investigation had been completed.

13. Even before examining the compliance under Section 57 of the Act, it must be pointed out that Section 57 is not mandatory. But at any rate, the records now produced by the respondent shows that the respondent had conducted multiple searches at multiple places. At the factory premises of K.R. Engineering Works / K.R. Kwaliti Racks, the Intelligence Officer and his team along with the Village Administrative Officer, had found both A-1



CrI.O.P.No. 10705 of 2024

and this petitioner/A-2 to be present and during the search, they found commercial quantity of brown Amorphay powder which they suspected to be the drug called 2 C-B. They also found yellow powder which they suspected to be MDMA. They also found jelly toffees called gummies which are actually drug called THC, Tetra Hydro Canna Binol. They further found substantial quantities of Ganja. They further found specific quantities of Cocaine. They further found 443 double design bearing Blots which they suspected to be LSD. They further found MT syringes. They also found nitta gelatin. They also found pink droppers. They also found unbranded electronic weighing machines for small weights. The seizure of all these contraband had been forwarded as a report under Section 57 of the NDPS Act 1985. They had also taken into custody A1 and A-2 and that information was also given under a report under Section 57 of the NDPS Act. During the search, they further found United States postal service envelopes with addresses and also cash of Rs.1,70,200/-. They prepared a Mahazar and this search which commenced at around 2.30 P.m., on 22.06.2023 ended at 2.45 a.m., on 23.06.2023.

14. This was pointed out by the learned counsel for the petitioner,



CrI.O.P.No. 10705 of 2024

who stated that if any search were to be conducted after sunset, then permission will have to be obtained. The said submission is rejected. The search commenced at 2.30 p.m., in the afternoon and continued at the same place and ended at 2.45 a.m., early in the morning the next day. It was one continuous search procedure. Therefore, the search did not commence after sunset but commenced well before that time. It had taken nearly 12 hours to search the entire premises to seize the contraband as mentioned above. The mahazar had to be prepared and was prepared at the same place. The seizure had to be effected and it was also done in accordance with the procedure. The arrested had to be effected and that was also done in accordance with the procedure.

15. Thereafter, on recording the voluntary statement of the accused, from the Special Post Office at Rathnapuri in Coimbatore two sealed postal boxes with Canada based tracking numbers were seized which also contained Ganja and Cocaine. Even for that seizure, a further report under Section 57 of the NDPS Act had been prepared and forwarded to the Superior Officers. The endorsements in that regard are available in the records.



Crl.O.P.No. 10705 of 2024

WEB COPY

16. It must also be pointed out that the search operations further continued at Chennai and at Bangaluru and again there had been substantial seizure of contraband in commercial quantity.

17. The records produced clearly show that there has been compliance of the stipulations both either under Section 42(2) and under Section 57 of the NDPS Act, 1985. In view of this specific finding on the basis of the records produced by the respondent which records had actually been forwarded to the petitioner, who was aware of these records, it would not require for this Court to examine the precedents stated on behalf of the petitioner. It must be straight away pointed out that with owing to the actual compliance of Section 42(2) and Section 57 of the Act, the Court will now have to only examine whether the stipulations under Section 37 of the NDPS Act, 1985 had been satisfied.

18. The stipulations under Section 37 of the NDPS Act, 1985 require that before granting bail for an offence under NDPS Act, 1985 twin conditions as provided under Section 37(1)(b) (i) and (ii) have to be satisfied. Section 37 of the N.D.P.S. Act is extracted herein below:



WEB COPY



Crl.O.P.No. 10705 of 2024

"37. Offences to be cognizable and non-bailable. -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)- (a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in



CrI.O.P.No. 10705 of 2024

clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

19. The Hon'ble Supreme Court had examined the expression 'reasonable grounds' as found in Section 37(1)(b)(ii) of NDPS, Act.

20. In ***Union of India Vs. Rattan Malik @ Habul, 2009 (1) SCC (CrI) 831***, the Hon'ble Supreme Court has settled the expression "reasonable grounds". The relevant paragraphs Nos.12, 13 and 14 are extracted below:

"12. It is plain from a bare reading of the nonobstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public



CrI.O.P.No. 10705 of 2024

Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide *Union of India Vs. Shiv Shanker Kesari*, 2007(7) SCC 798] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail



Crl.O.P.No. 10705 of 2024

*under the NDPS Act. 14. We may, however, hasten to add that **while considering an application for bail** with reference to Section 37 of the NDPS Act, **the Court is not called upon to record a finding of 'not guilty'**. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. **What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.**"*

(Emphasis Supplied)

21. The Hon'ble Supreme Court while dealing with the question of possession and application of Section 50 in the case of **Megh Singh Vs. State of Punjab, 2003 CRI. L.J. 4329**, held that word 'possession' includes



conscious possession. Relevant paragraph nos. 9 to 13 are extracted below:

*"9. The expression '**possession**' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in **Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52)**, to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.*

*10. The word '**conscious**' means awareness about a particular fact. It is a state of mind which is deliberate or intended.*

*11. As noted in **Gunwantlal v. The State of M.P. (AIR 1972 SC 1756)** possession in a given case need not be physical possession but can be **constructive**, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.*

*12. The word '**possession**' means the legal right to possession (See **Health v. Drown***



WEB COPY



Crl.O.P.No. 10705 of 2024

(1972) (2) All ER 561 (HL). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD)).

*13. Once possession is established **the person who claims that it was not a conscious possession has to establish it**, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in **Madan Lal and Anr. v. State of Himachal Pradesh (2003 (6) SCALE 483).**"*

22. The Hon'ble Supreme Court in the case of **Dehal Singh vs. State of Himanchal Pradesh, 2011 (72) ACC 661**, has again considered the concept of "conscious possession". In the said case, two accused persons were



Crl.O.P.No. 10705 of 2024

travelling in a car and they knew each other. From the windows/door of the said car, recovery of 27 Kgs. 800 gms. of charas was made, which were found concealed between the shields and doors of the car. The Hon'ble Supreme Court in the said case, taking into consideration the provisions of Sections 35 and 54 of the N.D.P.S. Act, had held that the accused was not only in possession, but conscious possession of the recovered contraband also.

23. It is thus seen that the Hon'ble Supreme Court had expanded the term possession to also include not just physical possession and constructive possession but also conscious possession.

24. The aforementioned Judgments had actually been cited even when the earlier application seeking bail was dismissed. There is no change in circumstances. Therefore, I am justified in once again placing reliance on the said Judgments.

25. Though the learned counsel for the petitioner had also cited a few Judgments, they are not directly relevant as they relate to examination of



CrI.O.P.No. 10705 of 2024

evidence adduced during trial and not the materials available at the time of grant of bail.

26. The petitioner was found in possession of substantial quantities of drugs ranging from Ganja to Cocaine to LSD in commercial quantity. The respondent had also seized contraband from different post offices where the drugs had been received from foreign countries like USA, Canada and France and also from a parcel sent by the first accused to an individual in Chennai.

27. In view of the reasons given, I hold that the petitioner has not made out any ground for consideration of this application seeking bail. Hence, this Criminal Original Petition stands dismissed.

11.07.2024

vsg

To

1. The Intelligence Officer
The Union of India
Narcotic Control Bureau
Chennai Zonal Unit
Chennai.

2. The Central Prison, Coimbatore.



Crl.O.P.No. 10705 of 2024

WEB COPY

3. The Public Prosecutor,
High Court of Madras.

C.V.KARTHIKEYAN, J.

vsg

Pre Delivery Order made in
Crl.O.P.No. 10705 of 2024

11.07.2024