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Crl.O.P.No.10392 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM

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

Crl.O.P.No.10392 of 2024

R.Ashokan

...Petitioner

Vs.

The State, represented by
The Inspector of Police,
PEW Ambattur.
Crime No.775 of 2023

...Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner/Accused on bail pending investigation in Crime No.775 of 2023 on the file of the Inspector of Police, PEW Ambattur.

For Petitioner : Mr.N.Chandrasekharan (Senior Counsel)
Assisted by M/s.Vijay Anand

For Respondent : Mr.V.J.Priyadarsana
Government Advocate (crl.side)

ORDER

The petitioner / accused in Crime No.775 of 2023 registered for the offences punishable under Sections 8(c) and 21(c) of the Narcotic Drug



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and Psychotropic Substances Act, 1985 and remanded to custody on 03.11.2023 seeks bail.

2. It is the case of the prosecution that on receiving information, the respondent had intercepted the accused, who was standing at Iyyapakkam Mani Road, ICF Colony bus stop with a shoulder bag which contained 150 bottles of 100 ml each of Choco+ syrup.

3. The learned Senior Counsel for the petitioner relied on Rules 13 and 14 of the NDPS Act which provide that samples taken from the seized contraband should be produced before the trial Court within a period of fifteen days. He further stated that, in this case, the contraband was seized on 03.11.2023 and had been produced before the trial Court only on 18.01.2024 after 77 days. The learned Senior counsel further pointed out that the samples were sent to the Forensic Science Laboratory only on 24.01.2024 after 84 days from the date of seizure.

4. It is the contention by the learned Senior counsel that the drugs



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license under the Drugs and Cosmetics Act, 1940 had been granted to the petitioner for the period from 22.06.2017 to 21.03.2022 and it had been renewed on 19.06.2022 for the period from 22.06.2022 to 21.06.2027. It is thus contended that, at the time of arrest, the petitioner who was working as a pharmacist had a right to possess the contraband, which was seized, since there was valid license to sell the same. It had also been stated that the Central Drugs Standard Control Organization (CDSCO) had notified the list of drugs prohibited for manufacture and sale by gazette notification under Section 26(A) of Drugs and Cosmetics Act, 1940 by the Ministry of Health and Family Welfare and it had been contended that Choco+ syrup had not been prohibited for manufacture or sale by the notification. It had been further stated that Choco+ syrup had been classified as Schedule H1 drug and therefore can be sold in retail on proper prescription by a registered Medical Practitioner. It had been further stated that Choco+ syrup contains fixed dose combination of Codeine Phosphate 10mg and Triprolidine HC 1.25 mg and is in the approved list from 18.02.2003 issued by CDSCO for symptomatic treatment of dry cough. The learned Senior Counsel further pointed out



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that there are a number of cough syrups manufactured by various pharmaceutical manufacturers. It had thus been stated by the learned Senior counsel that the petitioner is entitled for bail.

5. The earlier application seeking bail was dismissed on 23.02.2024 in Crl.O.P.No.1312 of 2024. At that particular time, the focus of the arguments was with respect to application of the provisions of NDPS Act and provisions of Drugs and Cosmetics Act, 1940. This Court has placed reliance on Section 80 of the NDPS Act and had stated that the provision will certainly applied. But now, the change in circumstance is that the investigation has been completed and final report has been filed. It had also been taken consequence that the matter is still pending in C.C. No.289 of 2024 before the II Additional NDPS Court at Chennai.

6. The contentions of the learned Senior Counsel with respect to the procedure under which the samples had been taken and the delay in producing the contraband and also the fact that the petitioner has license under the Drugs and Cosmetics Act, pointed out that an arguable case has been presented and there is every possibility of the same being



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interpreted to the advantage of the petitioner also during the course of trial. In view of that particular fact and taking into consideration the period of incarceration from 03.11.2023 for a period of more than 8 months and also the fact that the investigation has also been completed, I am inclined to grant bail to the petitioner, subject to the following conditions:

7. Accordingly, the petitioner is ordered to be released on bail on executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties, for a like sum to the satisfaction of the learned Principal Special Court under EC & NDPS Act, at Chennai, and on further conditions that:-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent Police **in the first instance for a period of two weeks everyday at 5.30 p.m., and thereafter before the Court every Monday at 10.30 a.m. for a period of three weeks**



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and thereafter, on the Court hearing dates.

[c] the petitioner shall not abscond either during investigation or trial.

[d] the petitioner shall not tamper with evidence or witness 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 under Section 229A IPC.

05.06.2024

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To

1.The State, represented by
The Inspector of Police,
PEW Ambattur.

2. The Central Prison, Puzhal.

3. The Principal Special Court under EC & NDPS Act,



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Chennai,

4.The Public Prosecutor, High Court of Madras.



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C.V.KARTHIKEYAN. J.

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