



Crl.R.C.No.1710 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.11.2024

PRONOUNCED ON : 26.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1710 of 2024

1. Vishnu Prasath
2. Surendiran @ Sunil ... Petitioners

Vs.

State Rep. by
The Inspector of Police,
PEW Gummidipoondi Police Station,
Tiruvallur District.
(Cr.No.266 of 2024) ... Respondent

RAYER: Criminal Revision Petition filed under Sections 438 r/w 442 of BNSS, to set aside the order passed in Crl.M.P.No.10633 of 2024 dated 27.09.2024 on the file of the Principal Judge under EC and NDPS Act Chennai.

For Petitioners : Mr.Martin Manivannan

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor



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ORDER

This revision challenges the order passed in Crl.M.P.No.10633 of 2024 dated 27.09.2024 on the file of the Principal Judge under EC and NDPS Act Chennai.

2. (i) The learned counsel for the petitioners would submit that though the FIR in this case alleges that the petitioners were in possession of commercial quantity of narcotic drugs, the respondent have not specified the weight of the contraband alleged to have been seized from the petitioners; that as per the FIR, 1500 Nos. of Nitrazepam Tablets IP 10mg was seized from the petitioners and that the total quantity therefore would be 15000mg=15gms, which is less than the commercial quantity and therefore, the respondent ought to have filed final report within 60 days; that the learned Judge while dismissing the bail petition had merely stated that the seized contraband is of commercial quantity, without specifying as to how it is a commercial quantity though the petition for statutory bail, was filed immediately after the expiry of 60 days.



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(ii) The learned counsel for the petitioners would further submit that since the weight of the tablets seized is not mentioned in the FIR, it cannot be treated as commercial quantity as held by the Karnataka High Court in Crl.Petition No.200596 of 2023 dated 14.06.2023.

3. (i) The learned Additional Public Prosecutor *per contra* would submit that even in the FIR it has been specifically mentioned that the contraband seized was of a commercial quantity; that during investigation it came to light that the tablet weighed 0.565 gms and therefore, the total contraband seized was $1500 \times 0.565 = 845.77\text{gms}$, which is a commercial quantity; and therefore, the learned Judge was right in dismissing the petition.

(ii) The learned Additional Public Prosecutor also relied upon a Forensic Science (Narcotic) report in another case in which a tablet of similar nature was found to be weighing 0.56gms.



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4. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor, appearing for the respondent/State and perused the materials placed before this Court.

5. Though the FIR in this case states that 1500 Nos. of Nitrazepam Tablets IP 10mg, was seized and it is a commercial quantity, the weight of tablets is not mentioned and the respondent had also not stated as to how, the quantity seized would amount to commercial quantity. Even when the respondent opposed the bail petition before the trial Court they had not stated the weight of the tablets seized. It is for the first time, that the respondent had stated in the counter filed before this Court that the contraband in the tablets weighed 847.5 gms as each tablets weighed 0.565 gms.

6. The learned counsel for the petitioners would submit that even if



1500 Nos. of Nitrazepam Tablets IP 10mg, is taken into account, the total weight of the contraband would be 15000 mg which is equal to 15 gms and therefore, it is less than commercial quantity. However, the learned

Additional Public Prosecutor would state that it is the total weight of the tablets that should be taken into account.

7. This Court would not go into that question at this stage as it is for the petitioners and the prosecution to establish their respective cases before the trial Court. However, without prejudice to the right of the prosecution to establish that the contraband seized was of commercial quantity, this Court is of the view that since neither in the FIR nor in the counter filed before the trial Court, the respondent has mentioned the weight of the tablets, the trial Court ought not to have held that it is of commercial quantity on the basis of the materials placed before it.

8. As stated earlier, it is for the prosecution to establish before the trial Court that it is of commercial quantity and for the defence to show that it is



not so. However, since as on date of filing of the petition, the weight of the tablets has not been mentioned, the trial Court while considering the bail petition, filed to exercise the indefeasible right of the accused, ought not to have presumed that it was of commercial quantity and dismissed the bail application. Hence, this Court is of the view that the order of the trial Court is liable to be set aside and the petitioners would be entitled to bail.

9. Accordingly, the order passed in Crl.M.P.No.10633 of 2024 dated 27.09.2024 on the file of the Principal Judge under EC and NDPS Act Chennai, is set aside. Hence, the petitioners shall be released on bail on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.10,000/-, each with two sureties, each for a like sum to the satisfaction of the learned Principal Judge under EC and NDPS Act, Chennai;
- (ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their



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Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and

(iii)The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

26.11.2024

Index:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No

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SUNDER MOHAN, J.

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To

1. The Principal Judge under EC and NDPS Act,
Chennai.
2. The Inspector of Police,
PEW Gummidipoondi Police Station,
Tiruvallur District.
3. The Superintendent of Prisons,
Central Prison, Puzhal, Chennai.
3. The Public Prosecutor,
High Court, Madras.

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