



WEB COPY



Crl.O.P.No. 29465 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2024

PRONOUNCED ON : 21.12.2024

CORAM

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

Crl.O.P.No. 29465 of 2024

S.Mohan Babu

... Petitioner/
Accused No.2

Vs.

State
The Inspector of Police
N-4, Fishing Harbour Police Station
Chennai.
(Crime No. 289 of 2022)

... Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 439 of Cr.P.C., BNSS, pleaded to enlarge the petitioner on bail in C.C.No. 274 of 2023 on the file of the Principal Special Judge under EC & NDPS Act cases, Chennai.

For Petitioner : Mr. T.S.Sasi Kumar

For Respondent : Mr.R.Vinoth Raja
Government Advocate (Crl.Side)



WEB COPY



Crl.O.P.No. 29465 of 2024

ORDER

The petitioner/A2 who was arrested and remanded to judicial custody on 06.11.2022 in Crime No.289 of 2022 registered by the respondent Police for the offences under Sections 8(c), 22(c) and 29(1) of NDPS Act, seeks bail.

2. This is the fourth application seeking bail. The earlier three applications had been dismissed by this Court.

3. The learned counsel for the petitioner stated that it is the case of the prosecution that from this petitioner and the other accused, 60 grams of Methamphetamine which is commercial quantity were said to have been seized. It is however pointed out by the learned counsel that in the mahazar, there is no indication that samples had been taken from the 60 grams of Methamphetamine. It is stated in the First Information Report that after the mahazar proceedings had been completed and after the arrest of the accused, two samples weighing 2 grams each were taken. This was not reflected in the records. The learned counsel further pointed out that when the contraband had been forwarded to the Court, the quantity of contraband so forwarded



CrI.O.P.No. 29465 of 2024

was 60 grams and there was no indication that samples had been taken. It is therefore contended that there is a strong suspicion about the chemical report forwarded and relied on by the respondent that the contraband seized was Methamphetamine.

4. The learned counsel stated that this would satisfy one of the twin conditions as given under Section 37 of the NDPS Act 1985 that there could be a likelihood of the petitioner being held not guilty on completion of trial.

5. This Court sought the original records to be perused. Records were produced. In the seizure mahazar, there is record for seizure of 60 grams of Methamphetamine.

6. In the special report filed, however, there is a statement about samples being taken from the seized contraband. In the document relating to remand of the property before the Special Court, it had been stated that the total property seized was 60 grams of Methamphetamine and that two samples of 2 gms each had been taken from it. But in Form -95, under which the property was sent to the Court, it had been stated that 60 grams of



Crl.O.P.No. 29465 of 2024

Methamphetamine had been sent to the Court.

7. It is seen from the records that the property had been produced before the Magistrate on 06.11.2022 and thereafter, before the Special Court on 10.11.2022. The property which was remanded was 60 grams of Methamphetamine.

8. It is seen from Rule 9 of the NDPS Act (Seizure, Storage, Sampling and Disposal) Rules 2022 that the sample should be drawn in the presence of the Magistrate and should be certified by the Magistrate in accordance with the provisions of Section 52-A(2) of NDPS Act 1985. Rule 9 of the NDPS Act (Seizure, Storage, Sampling and Disposal) Rules 2022 is as follows:-

“9. Samples to be drawn in the presence of Magistrate. – After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in



accordance with the provisions of the said-sub-section. ”

9. Section 52-A(2) of the NDPS Act, 1985 is as follows:-

“Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a)certifying the correctness of the inventory so prepared; or



Crl.O.P.No. 29465 of 2024

WEB COPY

(b) taking, in the presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn. ”

10. There is no document produced to show that samples were actually drawn either at the time of arrest or when the properties were remanded to the custody of the Magistrate Court initially and later to the special Court. What is produced is only a special report in this regard and the statement in the FIR.

11. In a Judgment delivered on **20.12.2024** ***Narcotic Control Bureau Vs. Kashif in SLP (Crl.No. 12120/2024)***, the Hon'ble Supreme Court had held as follows:-

“Sub-section 2 of Section 52A lays down the procedure as contemplated in sub-section 1. Therefore any lapse or delay would merely be a procedural



CrI.O.P.No. 29465 of 2024

irregularity. Any procedural irregularity found to be in conducting search or seizure during the course of investigation or thereafter would not by itself make the entire evidence inadmissible. The Court would have to consider all circumstances... Any prima facie delay or lapse in compliance of Section 52A by itself would not be a ground to release the accused on bail unless the conditions mandated under Section 37(1)(b) have been found to have been satisfied."

12. It was also held that while granting bail to the accused, the Court must consider the provisions of Section 37 of the Act which are mandatory in nature. The Court held as follows:-

"Recording of findings as mandatory in Section 37 is sine qua non for granting bail to the accused involving in the offences under the Act,"

13. The learned counsel for the petitioner further stated that the petitioner had been in custody from 06.11.2022. He is also suffering from HIV. It is stated on behalf of the respondent, that treatment is given to the petitioner herein.



Crl.O.P.No. 29465 of 2024

WEB COPY

14. The learned Government Advocate (Crl. Side) appearing for the respondent pointed out that though the other accused had been granted bail, they had been alternatively absenting themselves from participating in the judicial process before the trial Court. If the accused are absent without any proper reason, then, the learned Special Judge has necessary authority to take appropriate in manner known to law.

15. However since it has been laid down by the Hon'ble Supreme Court that any procedural irregularity would not by itself make the entire evidence inadmissible and would not be a ground to grant bail, I am not inclined to accept to the submissions of the learned counsel for the petitioner.

16. In view of the above reasons, this Criminal Original Petition stands dismissed.

21.12.2024

vsg

Index:Yes/No

Neutral Citation:Yes/No

Speaking order : Yes/No



Crl.O.P.No. 29465 of 2024

To
WEB COPY

1. The Inspector of Police
N-4, Fishing Harbour Police Station
Chennai.
2. The Central Prison, Puzhal, Chennai.
3. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No. 29465 of 2024

C.V.KARTHIKEYAN, J.

vsg

Pre Delivery Order made in
Crl.O.P.No. 29465 of 2024

21.12.2024