IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 09.01.2025
Pronouncing orders on : 28.01.2025

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

Crl.O.P.Nos.25303 & 25933 of 2024

Crl.O.P.No.25303 of 2024

F.Jamaluddin .. Petitioner

Vs.

Union, Rep. by
Intelligence Officer,
DRI, Chennai Zone,
Chennai – 600 017
R.R.No.1 of 2023
F.No.DRI/CZU/VIII/48/ENQ-01/INT-02/2023 .. Respondent

Prayer: Criminal Original Petitions filed under Section 483 of BNSS, praying to enlarge the petitioner on bail in C.C.No.971 of 2023 before the I Additional Special Judge, Special Court under EC & NDPS Act, Chennai.

For Petitioner .. Mr.M.G.Martin Manivannan

For Respondents .. Mr.N.P.Kumar
Special Public Prosecutor

Crl.O.P.No.25933 of 2024

Jasheer Razak .. Petitioner

Vs.

Union of India
Rep. by the Intelligence Officer,
Directorate of Revenue Intelligence
Chennai Zonal Unit
No.27, G.N.Chetty Road
T.Nagar
Chennai – 600 017 .. Respondent

Prayer: Criminal Original Petitions filed under Section 483 of BNSS, praying to grant bail to the petitioner pending investigation in R.R.No.1 of 2023 on the file of the respondent police.

For Petitioner	..	Mr.M.Jaikumar
For Respondents	..	Mr.N.P.Kumar Special Public Prosecutor

ORDER

A1 has filed Crl.O.P.No.25303 of 2024 and A2 has filed Crl.O.P.No.25933, both in C.C.No.971 of 2023, now pending before the I Additional Special Court for exclusive trial of cases under the NDPS Act at Chennai.

2.A case had been registered by the respondent on 18.07.2022 in R.R.No.01 of 2023 for offences under Section 8(c) punishable under Sections 20(b)(ii)(c), 23, 28 and 29 of NDPS Act, 1985. On information received that Marijuana (Hydroponic Weed) had been imported through a consignment of M/s.Jamal Industries under IEC No.ARWPJ4212E covered under Bill of Entry 4091192 dated 08.01.2023 and Airway Bill 020-127424413 (HAWB: 1671034358) through Chennai Air Cargo Complex and the same was lying at Air Cargo Complex, Meenambakkam, Chennai.

3.The consignment was taken for examination on 23.01.2023 by the respondent under mahazar proceedings dated 23/24.01.2023 in the presence of independent witnesses. A detailed examination led to the recovery of 56.05 kgs of Marijuana (Hydroponic Weed) which is classified as a drug under the NDPS Act, 1985, filled in polythene packets which were found concealed under the sink basin made of plaster of paris by false bottom of the consignment. Samples were also taken for testing. The contraband was seized by mahazar proceedings dated 23/24.01.2023. Subsequent to investigation, the respondent filed a final report which was taken cognizance as C.C.No.971 of 2023 by the I Additional Special Court for exclusive Trial of Cases under the NDPS Act, Chennai.

4.The petitioner in Crl.O.P.No.25303 of 2024/A1 was remanded to custody on 27.01.2023. The petitioner in Crl.O.P.No.25933 of 2024/A2 was also remanded to custody on 27.01.2023. The earlier application seeking bail by the petitioner in Crl.O.P.No.25303 of 2024/A1 in Crl.O.P.No.7061 of 2023 had been dismissed by an order dated 22.11.2023 and the second application seeking bail in Crl.O.P.No.19477 of 2024 had been dismissed on 18.09.2024. The earlier application of the petitioner in Crl.O.P.No.25933 of 2024/A2 in Crl.O.P.No.20782 of 2023 had been dismissed by an order dated 22.11.2023 and the application seeking bail filed before the Hon'ble Supreme Court in SLP(Crl)No.2105 of 2024 had been dismissed as withdrawn on 26.02.2024.

5.In the application seeking bail in Crl.O.P.No.25303 of 2024, it had been contended that the petitioner/A1 is running a Saw Mill and Wood Industries at Mangalore in the name of M/s.Jamal Wood Industries. The petitioner/A1was the proprietor of the said Jamal Wood Industries. He had obtained Import and Export Code (IEC) in the year 2022. It was issued on 19.10.2022. He had received a notice under Section 67 of the NDPS Act issued by the respondent. The petitioner claimed that he only knew that A2/Petitioner in Crl.O.P.No.25933 of 2024 who was his relative had imported two numbers of sinks from Dubai. The petitioner claimed that without providing any documents to corroborate the stand, the respondent stated that they were aware of all the facts.

6.The petitioners had appeared on receipt of the Summons under Section 67 of the NDPS Act. He had stated that A2 had also transferred some amounts on two occasions to the account of the Jamal Wood Industries. The petitioner claimed that it was not correct to allege that he had tried to transfer Rs.1,30,000/- to the consignor for the purchase of Marijuana. The petitioner claimed that all the consignments were opened by the respondent without informing the petitioner.

7.He further claimed that the respondent had not disclosed whether the consignment was to be delivered at Chennai or at Bangalore. He had also stated that he had been arrested only on the basis of confession given by co-accused. There has been no recovery from the petitioner. The petitioner claimed that it was also the case of the respondent that no payment had been made to M/s.Polaris Home Design, USA and therefore stated that without any payment, the shipment could not have been made.

8.It has been asserted that the respondent had not established the allegation that A2 had imported the sinks using the IEC of the petitioner's company. The petitioner further claimed that on the date of filing of the petition, he had been confined for more than twenty months. Pleadings these facts, the petitioner sought bail to be granted to him.

9.The petitioner in Crl.O.P.No.25933 of 2024/A2, in his petition seeking bail stated that two sink basins were imported from USA for which A1 had filed a bill of entry on 08.01.2023. The name of the sinks were Azure Bathroom Vanity. The consignor was Bed and Bath Italia, USA. He further stated that the respondent recovered 56.05 Kgs of Marijuana/Hydroponic Weed (Cannabis) sealed in polythene packets and concealed under the sink basin which was made of plaster of paris by false bottom in the sink basin. The petitioner claimed that he did not commit any offence and he was only an agent preparing documents for importing goods. He further claimed that one Fouzan was the owner of Jamal Industries and that the petitioners assisted in the import of the bathroom sinks. He claimed that he did not have any knowledge about the seizure of the contraband. The petitioner claimed that there was no money transaction between him and the exporter of the goods. He had no role in the import of the goods except to give assistance in preparing documents. The petitioner claimed that he is innocent of the allegation and therefore sought bail.

10.In the counter affidavit filed in the Crl.O.P.No.25303 of 2024 it had been stated that apart from the import documents it had been ascertained that M/s.Jamal Industries had filed Bill of Entry No.4091192 dated 08.01.2023 for import of Azure Bathroom Vanity consigned by M/s.Bed and Bath Italia, USA. The consignee was

Jamal Industries registered with IEC Code/ARWPJ4212E. It had been further stated that A1 was the Proprietor of Jamal Industries and the IEC holder. It had been stated that contraband had been seized from the shipment for which A1 had attempted payment.

11.It had been further stated that the attempts made to transfer the amounts on 18.11.2022, 26.11.2022 and 28.11.2022 the import of the consignment containing Marijuana. were reflected in the bank transaction in A/c.No.710220200000018 in Bank of Baroda, Founder's Branch, Mangalore 575 023. It had been stated that these transactions were reflected in the bank statement and the accused cannot deny or dispute the said statement.

12.It had been further stated that A1 had lent his IEC as license for illegal importation of Marijuana (Hydroponic Weed) in commercial quantity for monetary consideration. It had been further stated that a search had been conducted in the residence of A1 on 26.01.2023 and one Proforma Invoice dated 11.11.2022 for $1,314 raised by M/s.Polaris Home Design, USA to M/s.Jamal Industries along with advance remittance against the Bank of Baroda dated 26.1.2022 amounting to $1,314 with signatures of A1 were recovered and seized. It was also observed from the invoice that the Proforma Invoice dated 11.11.2022 amounting to $1,314 was issued by M/s.Polaris Home Design, USA to M/s.Jamal Industries and invoices dated 12.01.2022 were issued by M/s.Bed and Bath Italia, USA to M/s.Jamal Industries, both bearing the same invoice number (8184). It had been stated that these documents would establish that both A1 and A2 were aware of the concealment of the contraband in the said cargo.

13.It had been further stated that in the sale invoice bill, it had been mentioned that the bill may be raised to M/s.Jamal Industries, Thalapady, Mangalore, Karnataka and the consignment may be shipped to M/s.Jamal Industries, Priyadharshini Nagar at Chennai. It was also stated that the said address at Priyadharshini Nagar was found to be a fake address. There was no such address. It was therefore contended that an incorrect address had been given to evade detection by the respondent. It had been stated that the contraband seized is commercial quantity and that the petitioner had not satisfied the conditions as laid down in Section 37 of NDPS Act. Therefore it is contended that the bail application should be dismissed.

14.In the counter affidavit filed with respect to Crl.O.P.No.25933 of 2024, it had been contended that A2 was also part of the criminal conspiracy in the import of

56.05 Kgs of Marijuana/Hydroponic Weed (Cannabis) which is a narcotic substance under the NDPS Act, 1985. He had acted as an intermediary for monetary consideration of Rs.25,000/- in providing the IEC and other forged documents to his cousin Fouzan at Dubai who arranged the shipment. He also received the payment from Fouzan. Amounts were also transferred to the bank account of A1 to make further remittance to the supplier, M/s.Polaris Home Design, USA. He also had communication with Fouzan through Whatsapp and Instagram. It had been contended that A2 had acted under the instruction of Fouzan who was his cousin. It was contended that the contraband seized was commercial in nature and that the petitioner would have to satisfy the conditions as stipulated under Section 37 of NDPS Act. It had been contended that the petition should be dismissed.

15.Heard arguments advanced by Mr.M.G.Martin Manivannan, learned counsel for the petitioner in Crl.O.P.No.25303 of 2024 and by Mr.M.Jaikumar, learned counsel for the petitioner in Crl.O.P.No.25933 of 2024 and by Mr.N.P.Kumar, learned Special Public Prosecutor for respondent.

16.It is the contention of Mr.M.G.Martin Manivannan, learned counsel for the petitioner/A1 that A1 was an illiterate person who did not know the details and intricacies of import and export. The learned counsel contended that A1 was having a business in Saw Wood in Mangalore. For the purpose of importing and exporting he had applied for IEC viz., Import Export Code after following due procedure. It had been also issued after due verification. However, he had not put it to any use. He claimed that it had been used by A2 without his knowledge.

17.The learned counsel further pointed out the invoices under which the consignment was sent and pointed out that from Los Angeles, the cargo had gone over to Frankfurt in Germany and thereafter to Heathrow Airport in London and then had arrived at Chennai. In the consignment, two address were given, one in Chennai and other in Bangalore. The learned counsel stated that even the name of consignee had been changed. The learned counsel pointed out that the petitioner had not received any amount from the entire transaction. It was contended that the petitioner was innocent of all transactions and that he had been falsely implicated in the case. The learned counsel stated that the petition should be dismissed.

18.Mr.M.Jaikumar, learned counsel for the petitioner/A2 contended that A2 did not have any direct role in the import of the contraband. The learned counsel stated that A2 had been added as an accused only because he was a relative of A1. The learned counsel stated that A2 had been in confinement for nearly about two years as on date and stated that the investigation has been completed and final report had also been filed and it had also been taken cognizance by the I Additional Special Court for exclusive trial of cases under the NDPS Act at Chennai. It had been contended that investigation has been completed and that therefore, the applicant must be released on bail.

19.Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the respondent disputed each and every contention raised by the counsels for the applicants.

20.Mr.N.P.Kumar, learned Special Public Prosecutor pointed out that information had been received about illegal import of contraband through Chennai Airport and thereafter, the respondent had seized the consignment which was lying at Air Cargo Complex, Meenambakkam, Chennai. When it was examined, it was found to be Marijuana/Hydroponic Weed). The total quantity seized was 56.05 kgs and the said quantity was commercial quantity. The learned Special Public Prosecutor pointed out that though it may be a fact that investigation had been completed and final report had been filed, still the petitioners will have to comply with the requirements of Section 37 of the NDPS Act, 1985.

21.The learned Special Public Prosecutor further stated that copies of the invoices were also recovered from the house of A1 and therefore stated that A1 cannot claim ignorance or innocence for the entire transaction. He also pointed out that all the KYC documents submitted to the freight forwarder were duly signed by A1. The learned counsel further stated that A1 had received consideration from A2 to be further forwarded to the supplier, M/s.Polaris Home Design at USA. He had stated that transfer of money had failed and therefore, the amounts were reversed to his account. The learned Special Public Prosecutor pointed out that it cannot be contended that the bank transactions were for a lesser amount than the value of contraband and therefore, it should be held that there was no import of contraband.

22.The learned Special Public Prosecutor further pointed out that an invoice dated 11.11.2022 raised by M/s.Polaris Home Design, USA for $1,314 had been recovered from the house of A1. He also stated that the document issued by M/s.Polaris Home Design, USA and the document issued by M/s.Bed and Bath Italia to M/s.Jamal Industries both had the same invoice number and therefore, it had been stated that A1 and A2 knew about the entire transaction. The learned Special Public Prosecutor contended that if the petitioners are released on bail there is every possibility of them absconding from the judicial process and also tampering of the witnesses. The learned Special Public Prosecutor therefore strongly objected to the bail or any relief being granted.

23.I have carefully considered the arguments advanced and perused the materials available.

24.A1 and A2 are brothers-in-law. They are very close relatives. There is yet another individual, namely Fouzan in Dubai who is a very close relative of A2. The respondent had received information about consignment of contraband/drugs in a consignment to Jamal Industries with IEC No.ARWPJ4212E under Bill of Entry 4091192 dated 08.01.2023. The respondent had seized the consignment for examination on 23.01.2023 from Air Cargo Complex.

25.It must be mentioned that they had also registered an FIR in R.R.No.01 of 2023 for offence under Sections 8(c) punishable under Section 20(b)(ii)(c), 23, 28 and 29 of the NDPS Act, 1985.

26.When the respondent examined the consignment, they found that a false bottom had been affixed to the bathroom sinks and they recovered 56.05 kgs of

Marijuana/Hydroponic Weed (Cannabis) which is a drug under the NDPS Act, 1985. Thereafter, enquiry had been made and it was found that the IEC under which consignment was imported stood in the name of M/s.Jamal Industries, whose sole proprietor was A1.

27.During the search of the residence of A1, the respondent also seized a proforma invoice dated 11.11.2022 for $1,314 raised by M/s.Polaris Home Design situated at USA along with advance remittance against a form of Bank of Baroda dated 26.11.2022.

28.The two bathroom sinks had been imported from USA. They did not come directly to Chennai. The documents shows that they had been first forwarded to Frankfurt in Germany and later to Heathrow Airport in London and then arrived at Chennai. In the invoices prepared by the consignor, two addresses were given for M/s.Jamal Industries. The billing address was given at Mangalore and the shipping address was given as Priyadharshini Indra Nagar at Chennai. When the respondent tried to locate Priyadharshini Indra Nagar at Chennai, they found that they could not locate the same and that it was a fake address. During search of the house of A1, the respondent also recovered a Proforma Invoice dated 11.11.2022 for $1,314 issued by M/s.Polaris Home Design, USA to M/s.Jamal Industries along with advance remittance against import form. It is thus seen that the transactions in the IEC of A1 had been used by the firm of which he is the sole proprietor. The firm was also named in the invoice and a Proforma Invoice of the consignor was also seized and recovered from his house.

29.The learned counsel for the petitioner argued that there had been tampering of the documents and stated that it could have been done at London or at any other place. But however, the fact is of recovery of Marijuana (Hydroponic Weed) from the consignment which was imported using the IEC of A1. This is a fact that can be explained only by A1. The documents relating to import had been prepared by A2 who is a brother-in-law of A1.

30.The learned counsel for the petitioner claimed that A1 was illiterate and did not know about the export and import business. But he had applied for IEC, obtained IEC and had utilized this IEC for import of two bathroom sinks of all products. They were strange articles to be imported. He did not only imported the bathroom sinks but also illegally imported 56.05 kgs of ganja hidden in the bottom of the two bathroom sinks. The claim of innocence by A1 is rejected. At every point, he had been directly involved in the import of the said Marijuana (Hydroponic Weed).

31.It must also be pointed out that A2 was in communication with the actual person who placed the order for shipment, Fouzan in Dubai. This individual is a very close relative to A2. He had also forwarded amounts to A2 to be further forwarded to A1. A1 had tried to forward the same to the consignor, but failed. But the documents relating to transfer of money to the account of A2 and later to the account of A1 and the failure of transfer to the consignor are available on record. The invoice which had been seized from the residence of A1 is also available on record. The IEC of A1 which was used for the import of the bathroom sinks is also available on record. These are all documents which will have to be proved during the course of trial.

32.Any argument advanced that those documents have been falsely created, can be examined only when the documents are put to test through a witness during the course of trial. This Court cannot draw a presumption on the admissibility or genuineness of those documents. They are documents which have primarily emanated from M/s.Jamal Industries, of which A1 is the sole proprietor.

33.It is also to be seen that the quantity of drugs seized is commercial quantity. Naturally, the petitioners will have to satisfy the provisions under Section 37 of the NDPS Act.

34.Section 37 of the NDPS Act which as follows:

*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 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.].

35.A careful perusal of the above provisions shows that while examining an application seeking a bail, the Court will have to examine whether the Public Prosecutor had been put on notice and must given sufficient opportunity for advancing arguments and must also examine whether, if let on bail there is a possibility of the accused committing a similar offence again and very importantly must record reasons to hold that there is a possibility that the applicants were not guilty of the offence. That conclusion could be reached in the instant case only when the documents relied on by the prosecution are *prima facie* found to be not at all connected with the allegation or offence alleged.

36.In the instant case, the respondent had produced the IEC which stands in the name of M/s.Jamal Industries of which A1 was the partner. The prosecution has also produced the proforma invoices seized from the residence of A1. The prosecution had also seized the documents relating to the import of the two bathroom sinks and almost all the import documents had been prepared by A2 and signed by A1. The prosecution had also produced documents relating to transfer of funds by Fouzan in Dubai to the account of A2 and subsequently to A1 and the attempts made by A1 to transfer the amount to the consignor. Those amounts may not be equal to the market value of the drug seized, but still it shows a direct connection with the consignor who sent the contraband which was hidden in the bathroom sinks to M/s.Jamal Industries. It is also to be noted that in all the KYC documents submitted to the freight forwarder, A1 had signed as proprietor of M/s.Jamal Industries. These documents prevail upon me to hold that the prosecution must be given an opportunity to establish the case during the course of trial and during that process it will only be appropriate that the petitioners are prevented from interfering with the trial process or with the witnesses.

37.It is an admitted fact that both the petitioners had been remanded to custody on 27.01.2023. They have been in custody for a period of two years. But unfortunately, the quantity of contraband seized is commercial in nature. The Hon'ble Supreme Court in ***Narcotics Control Bureau vs. Mohit Aggarwal*** reported in ***2022 18 SCC 374*** had held as follows:

> *11. It is evident from a plain reading of the non obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the court when granting bail to a person accused of having committed an offence under the NDPS Act.*
>
> *12. The expression "reasonable grounds" has come up for discussion in several rulings of this Court. In Collector of Customs v. Ahmadalieva Nodira, a decision rendered by a three-Judge Bench of this Court, it has been held thus: (SCC p. 552, para 7)*

"7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present respondent-accused is concerned, are the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence."

(emphasis supplied)

13. The expression "reasonable ground" came up for discussion in State of Kerala v. Rajesh and this Court has observed as below: (SCC p. 129, para 20)

"20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires

existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

(emphasis supplied)

14. To sum up, the expression "reasonable grounds" used in clause (b) of sub-section (1) of Section 37 would mean credible and plausible grounds for the court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the court to believe that the accused person would not have committed such an offence. Dovetailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of Section 37 of the Act, the court is not required to record a finding that the accused person is not guilty. The court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the

NDPS Act or not. The entire exercise that the court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offenses that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

38.It is seen that the Hon'ble Supreme Court had made it imperative that Courts must exercise caution while examining an application seeking bail in drugs offences, more particularly, when the contraband of drugs seized was commercial in nature.

39.In the instant case, no complaints had been made about the procedure adopted for seizure or for taking of sample or on any other aspect.

40.The learned counsels had stated that there has been no progress in the trial of the case. But however, the Court will have to focus on the issue whether the petitioners had satisfied the conditions as stipulated under Section 37 of the NDPS Act, to convince the Court to come to a conclusion that they could not be guilty of the offence alleged. Unfortunately, their efforts in that regard have not borne fruit. There has been no change of circumstances from the previous date on which the earlier bail applications had been dismissed.

41.I am not inclined to grant bail. Accordingly, both the criminal original petitions stand dismissed.

28.01.2025

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

To

The Intelligence Officer,
Rep. by Union of India
Directorate of Revenue Intelligence
Chennai Zonal Unit
No.27, G.N.Chetty Road
T.Nagar
Chennai – 600 017

C.V.KARTHIKEYAN,J.

ssr

Crl.O.P.Nos.25303 & 25933 of 2024

28.01.2025