

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION No.9450/2022

BETWEEN:

SRI. THAHA UMMER
S/O UMMAR
AGED 38 YEARS
RESIDING AT PADIKKA MANNI HOUSE
KOOTILANGADI, MALAPPURAM
KERALA ...PETITIONER

(BY SRI. VIVEK .S. REDDY, SENIOR COUNSEL FOR
SRI. SHAIK ISMAIL ZABIULLA, ADVOCATE)

AND:

UNION OF INDIA
NARCOTICS CONTROL BUREAU
BANGALORE ZONAL UNIT
NO.7/1-2, PRIYANK VILAS,
RAMANNA GARDEN, BAGLUR MAIN ROAD
KATTIGENAHALLI, YELAHANKA
BENGALURU-560 063 ... RESPONDENT

(BY SRI. BALAKRISHNA. M.R., CGSC)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C, PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.48/1/11/2022/BZU REGISTERED BY NCB POLICE, BENGALURU ZONAL UNIT, BENGALURU FOR THE ALLEGED OFFENCE P/U/S 8(c) R/W 22(b), 23(c), 27A, 28 AND 29 OF N.D.P.S. ACT PENDING ON THE FILE OF XXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE(NDPS), CCH-33, BENGALURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.10.2022, COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner/Accused No.1 has filed this petition under Section 439 of Cr.P.C. for enjoining him on bail in Narcotic Control Bureau (for short, 'NCB') Crime No.48/1/11/2022/BZU registered by NCB, Bengaluru Zonal Unit, for the offences punishable under Sections 8(c) read with Sections 22(b), 23(c), 27-A, 28 & 29 of Narcotic Drugs Psychotropic Substances Act, 1985 (for short, 'NDPS Act'), pending on the file of XXXIII Additional City Civil and Sessions Judge and Special Judge (NDPS) CCH-33, Bengaluru.

2. The brief factual matrix leading to the case are that, on 07.05.2022 a reliable information was received by complainant, regarding the suspicious parcel having Way Bill No, 1826193810 laying at DHL Express (India) Pvt. Ltd., Express Cargo Terminal, No.

C 19, North Cargo Road, Kempegowda International Airport, Bengaluru – 560 300 and it was suspected to be containing Clonazepam Tablets, which is covered under NDPS Act. Then after taking necessary instructions in writing from the superintendent of NCB at Bengaluru Zonal Unit, the Investigating Officer along with his team reached the DHL Express (India) Pvt. Ltd., Express Cargo Terminal No.C-19, North Cargo Road, Kempegowda International Airport, Bengaluru and a parcel was found to be booked by Sri. Ajmal Nanath Valiyatt, son of Haris Nanath Valiyatt, resident of Nanath valiyatt House, Melmuri, Malappuram, Kerala and was addressed to one Sri Zainul Abid Mannan Paramban, Al Madden Sweets, Halaga Vegetables Market, Near Shamaisi Warehouse, PO Box Number 6641, Jeddah, K.S.A Jeddah, Saudi, Arabia. Then after following the procedures as per law, 357 grams of Clonazepam Tablets (a psychotropic substance under the provision of NDPS Act) was seized from that parcel from the said Cargo

and seizure mahazar was also drawn at the spot on 07.05.2022. It is further alleged that four summons have been issued to the present petitioner/Accused No.1 for his appearance for interrogation and subsequently, the present petitioner/accused was arrested on 25.08.2022 and after interrogation, he was produced before the Court and then he was remanded to judicial custody.

3. The petitioner has approached the learned Sessions Judge/Special Judge seeking regular bail in Criminal Misc. No.8757/2022 and that bail petition came to be rejected. Hence, he is before this Court.

4. Heard the arguments advanced by Sri. Vivek S. Reddy, learned Senior Counsel for the petitioner/Accused No.1 and Sri. M.R. Balakrishna, the Central Government Standing Counsel ('CGSC' for short) for the Respondent-NCB. Perused the records.

5. Learned counsel for the petitioner/Accused No.1 would contend that the petitioner is innocent and he is working as a medical items supplier, but not an exporter. He would also contend that, Rivotril-2 Tablets of 2244 were seized when it is alleged that they were being transported in postal cover. It is asserted that, there were six bottles as per case of prosecution and all the tablets were mixed together and common sample was taken by the raiding party and though they had taken DD Kits, no instant test was conducted at the spot. He would also contend that, the test report would disclose that the sample was weighing 4.2 grams. But, as per the Standing Order, minimum 5 grams were required to be taken as sample for testing and it is violation of the Standing Order. He would also contend that, percentage of the Clonazepam Tablets is also not stated in the report and Rivotril-2 tables are not banned and what is banned is Clonazepam Tablets. He would contend that there is no proper drawing of

samples and results are also doubtful and when there is no proper procedure being followed as laid down in the Standing Order, the petitioner is entitled for bail. Further, in support of his contention he has placed a decision of Telengana High Court in **Criminal Petition No.4428/2022 [Baba Sow Chandekar and Another Vs. The State of Telangana].**

6. Per contra, the learned CGSC for the respondent-NCB would seriously oppose the bail petition and elaborate objections were also filed. It is contended that the petitioner is owner as well as the manufacturer of the said Clonazepam Tablets, while Accused No.2 was working under Accused No.1. He would contend that, booking of the parcel was made by petitioner by using Aadhar Card of Accused No.2 and the seized quantity contains 357 grams of Clonazepam, which is banned and above 100 grams is commercial quantity. He would also contend that the records disclose that the petitioner has booked 27 parcels in similar way on various earlier dates and

sent to various countries. He would also invite the attention of the Court to the averments made by Accused No.2, while filing bail petition wherein allegations of involvement of the present petitioner by misusing his Aadhar Card and creating fake prescriptions was made, which cannot be ignored. He would also contend that, the bar under Section 37 of the NDPS Act is not explained. He would further contend that, in view of the decisions of the Hon'ble Apex Court, the principles enunciated in the decision of Telangana High Court (supra) relied upon by the learned counsel for the petitioner/Accused No.1 would not apply and as such, he would seek for rejection of the bail petition.

7. Having heard the arguments and perusing the records, it is evident that Clonazepam is a banned Narcotic Drug and it is covered under NDPS Act, 1985. Further as per the case of prosecution, when the suspected parcel was opened in the presence of independent witnesses, they found six bottles of

Septilin Tablets and all the bottles were found with loose and unsealed lid and the six bottles were containing some drugs from Himalaya Company.

8. Subsequently, other six bottles were also found, which were found to be contained Revotril-2 Tablets white in colour and each bottle was containing 374 numbers of Revotril-2 Tablets and totally there were 2244 of Revotril-2 tablets. Then all the tablets were put together in one transparent polythene zip lock cover and weighed, which was found to be 357 grams. It is also specifically asserted that Revotril-2 contains Clonazepam, which is a psychotropic substance and it is banned under NDPS Act. It is the specific assertion of the prosecution that the petitioner/Accused No.1 is the manufacturer and supplier.

9. The learned Senior Counsel appearing for the petitioner was harping and attacking the prosecution on the point of seizure. He has placed

reliance on the Standing Order and he would also contend that the Invoice produced by him discloses that, he has purchased the Revotril-2 tablets. However, whether the petitioner/accused No.1 was illegally transporting these banned drugs, is required to be considered.

10. In this context, the learned counsel for the respondent-NCB has invited the attention of the Court to the petition filed by Accused No.2-Ajmal, before the learned Sessions/Special Judge and in whose name the parcel was booked. In the said petition, in Para No.4, he has specifically asserted that the present petitioner being owner of the Medical Shop and being his employer had misused his Aadhar Card for dispatching the banned drugs Clonazepam Tablets to the foreign countries through Airways. Further, in Para No.5, he has also specifically asserted that the present petitioner being the owner of the Medical Shop, had created fake Doctors' prescriptions by using fake patients' name. These allegations made by

the co-accused, who is the employee of the present petitioner, clearly disclose that the petitioner was trying to conceal his identity by booking parcel in the name of his employee and also used fake medical prescriptions and fake patients' name. These are very serious aspects and the seized quantity of banned drug is more than a commercial quantity.

11. The main contention of the learned Senior counsel appearing for the petitioner is regarding violation of Standing Order and the sample being taken less than the minimum quantity prescribed and in this context, he relied on the decision of the Telangana High Court referred above. The said case was pertaining to Ganja and the facts involved therein are entirely different. No doubt, the minimum quantity for sample testing ought to have been drawn to the extent of 05 grams, but at the same time, the Chemical Examiner never rejected the sample on the ground that it is less than the prescribed quantity and it is not possible to analyse the same.

12. On the contrary, the learned counsel for the respondent-NCB has placed reliance on a decision reported in **2022 LiveKaw (SC) 878 (Union of India (NCB Etc. Vs. Khalil Uddin Etc.)**). He would argue that, in view of the statement made by Accused No.2, while filing his anticipatory bail petition before the learned Sessions/Special Judge, the other allegations now required to be ignored, as the matter is still at the stage of investigation. Further, he would contend that in the face of Mandate of Section 37 of NDPS Act, question of granting bail at this stage does not arise at all. He would also place reliance on the decision of the Apex Court reported in **2000 AIR SC 3661 (Superintendent, NCB, Chennai Vs. R.Paulsamy)** wherein a similar observation is made observing that, in terms of Section-37 of the NDPS Act and in view of non-finding in terms of regarding Section 37 of the NDPS Act, question of granting bail does not arise at all. He has further placed reliance on a decision of Hon'ble Apex Court reported in **1999**

AIR SC 2378 (State of Punjab Vs. Baldev Singh)

and invited the attention of the Court to Para No.3, wherein Hon'ble Apex Court has observed regarding Drug Addition, Drug abuse and its effect on the society. The Hon'ble Apex Court in Para No.3 has observed as under:

"3. Drug abuse is a social malady. While drug addition eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. There is no doubt that drug trafficking, trading and its use, which is a global phenomena and has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture. Anti-drug justice is a criminal dimension of social justice. The United Nations Conventions Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances which was held in Vienna, Australia in 1988

was perhaps one of the first efforts, at an international level, to tackle the menace of drug trafficking throughout the comity of nations. The Government of India has ratified this convention."

13. The drug abuse is a menace and prima facie there is material evidence to show that the parcel was booked by the present petitioner/Accused No.1 and it contains Clonazepam Tablets, which is more than commercial quantity. The allegations and assertion of Accused No.2 in his petition filed before the learned Sessions/Special Judge would clearly disclose that the petitioner/Accused No.1 was using fake prescriptions and fake orders and transporting drugs and these aspects cannot be ignored. Further, the mandate of Section 37 of NDPS discloses that the offences are cognizable and non-bailable, and negative burden is casted on the present petitioner to disprove the case of prosecution. But, except formal denial, no material evidence is placed and though there is certain irregularity in non-compliance of

Standing Order, at this juncture that cannot be a ground for admitting the petitioner/Accused No.1 on bail, in view of mandate of Section 37 of the NDPS Act. Further, under Section 35 of the NDPS Act, there is presumption of culpable mental state of mind and no explanation is forthcoming from the petitioner in this regard. The drug menace is affecting the entire society and especially it is targeting the younger generation and it affects the economy of the country and illicit money is being used for drug trafficking and illegal money is being generated to promote the same. This is a serious aspect and it cannot be taken in a light way.

14. Looking to these facts and circumstances, at this juncture there is no material evidence to establish innocence of the petitioner/Accused No.1 and as such, question of admitting him on bail at this juncture does not arise at all. Hence, the petition being devoid of any merits does not survive for consideration, as the matter is still at the stage of

investigation and involves serious issues, and as such, the petition needs to be dismissed. Accordingly, the petition stands dismissed.

**Sd/-
JUDGE**

KGR*
CT:NR