

Madras High Court
Union Of India vs Bharat Chaudhary

CRL. O.P.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on Pronounced on
01.07.2021 15.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NOS.18450 OF 2020

AND

CRL. O.P. NOS. 6056, 6115 & 6224 OF 2021

Union of India
rep. By the Intelligence Officer
Shri. Ranjan Kumar
Directorate of Revenue Intelligence
Chennai Zonal Unit
No.27, G.N.Chetty Road, T.Nagar
Chennai 600 017.

.. Petitioner in Cr

M.V.Srinivasan

.. Petitioner in Cr

Ashok Kumar

.. Petitioner in Cr

Raja chandrasekaran

.. Petitioner in Cr

- Vs -

Bharat Chaudhary

.. Respondent in Cr

State by The Intelligence Officer Directorate of Revenue Intelligence Chennai Zonal Unit No.27, G.N.Chetty Road, T.Nagar Chennai 600 017. .. Respondent in Crl. OP 6056/21 <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc. Director of Revenue Intelligence Chennai Zonal Unit No.25, Gopalakrishna (Iyer) Road T.Nagar, Chennai 600 017. Respondent in Crl. OP 6115/21 The Intelligence Officer Directorate of Revenue Intelligence 27, G.N. Chetty Road T.Nagar, Chennai 600 017. Respondent in Crl. OP 6224/21 Crl. O.P. No.18450 of 2020 filed u/s 439 (2) Cr.P.C. praying this Court to cancel the bail order dated 2.11.2020 passed in Crl. M.P. No.1436 of 2020 by the Special Judge for EC & NDPS Cases, Chennai.

Crl. O.P. Nos.6056, 6115 and 6224 of 2021 filed u/s 439 Cr.P.C. Praying this Court to enlarge the petitioner on bail in respect of C.C. No.37 of 2020 on the file of the Principal Judge, Principal Special Court for EC & NDPS Act Cases, Chennai.

For Petitioners : Mr. G.Murugendran in Crl. OP No.6056/21 Mr. R.Venkataraman in Crl. OP No.6115/21 Ms. Mamta Pandey in Crl. OP No.6224/21 Mr. N.P. Kumar, Spl. PP for DRI Cases in Crl. OP No.18450/20 For Respondent : Mr. B.Kumar, SC, for Mr. R.C.Paul Kanagaraj in Crl. OP 18450/20 Mr. N.P. Kumar, Spl. PP for DRI Cases in Crl. OP Nos.6056, 6115 & 6224/21 <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc. COMMON ORDER The impact of narcotics in the life of the present generation is of such a magnitude and enormity that the Governments across the globe have brought stringent measures to deal with trafficking of such substances and stringent punishments are also envisaged for any infraction of the same. However, inspite of such stringent laws and penal actions, the trafficking in the said commodity is only on the increase, thereby spreading its arms far and wide to engulf within its fold the next generation, who are the pillars of the country and, thereby destroying their life.

2. Drug traffickers have found innovative methods and ways to transport across the globe the narcotic drugs, which totally demolishes the life of very many persons and threatens the safety and security of our future generations. Drug traffickers, with least regard to the health and life of the persons, and only with a view to their betterment, distribute the narcotic drugs among the younger generations, which is the root cause of many evils that are being perpetrated by the persons under the influence of the said drugs.

<https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc.

3. One such case of innovative trafficking unearthed by the respondent in the present set of petitions, leading to the seizure of a huge haul of contraband, reveals that the courier service has been used for the purpose of transporting the contraband.

4. There are two sets of petitions. One set of petition relates to grant of bail as covered in Crl. O.P. Nos.6506, 6115 and 6224/21 and the other relates to Crl. O.P. No.18450/20 in and by which the bail granted to the petitioner/A-4 is sought to be cancelled by the prosecution. As all the petitions are intertwined leading to a composite crime, they are heard together and disposed of by this common order. This Court, in the fitness of things, would deal with the cancellation of bail as the order, which would be passed in the said case, would form the basis for deciding as to granting the relief of bail or not.

5. The case of the prosecution is that based on specific intelligence, the officers of the Directorate of Revenue Intelligence (for short 'DRI'), Chennai Zonal Unit, seized approximately 1,37,665 tablets of various kinds totally weighing around 90 Kgs., under mahazars dated 15-17/10/2019 from the following places:-

i) M/s.Aviation Star Express <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc.

ii) 2Destination (franchise of M/s. ST Courier)

iii) Residential premises of Raja Chandrasekaran

iv) Office premises of M/s.DHL Express

6. The said seizures were made by the DRI officials on the reasonable belief that the said substances are psychotropic substances covered under the provisions of the NDPS Act r/w the Customs Act. It is the further case of the prosecution that the follow up of the investigation led to the summoning of Raja Chandrasekaran (A-1), M.V.Srinivasan (A-2) and Ashok Kumar (A-3) from whose place the abovesaid tablets were recovered. After recording the voluntary statements of A-1 to A-3, who admitted to their trafficking in the contraband along with A-4, they were booked for the offences u/s 8 (c) of the NDPS Act and remanded to judicial custody.

7. It is the further case of the prosecution that the tablets were procured from various suppliers from Nagpur and Rajasthan and they are being exported to foreign countries under the guise of herbal/ayurvedic medicines. In fact, the products are packaged in such a manner, as per the dictates of A-4 so as to circumvent its identification by the official respondents. To enable such a <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc. scheme, secret codes in which the packages are to be packed so that the actual product in the said bottle is identifiable by the person receiving the bottle is provided by A-4. The prosecution further alleged that the contraband were Alprazolam (Xanax), Diazepam (Valium) and Zolpidem (Ambien) tablets, which are being cleared through courier to clients in USA. It is the further case of the prosecution that to aid the said business, A-4 is running call centres and with the help of one Alex in USA, the consignments are prepared and sent through couriers.

8. It is the further case of the prosecution that in furtherance to the investigation, the residential and business premises of A-4 were searched, and enquiry of A-4 revealed the aforesaid circuitous process in which the contraband are being supplied. A-4 further revealed the names of Sanjeev, Prakash Kataria and Prabhakaran as the persons, who procured and supplied the drugs. In addition to the above drugs, drugs such as Addrell containing Dextraamphathamine, Oxycodone, Acetomorphine, Tramadol, M-30 containing Tramadol + Hydrocodone HCL, M-365 containing Hydrocodone- HCL+Acetomorphine, Zolfresh, etc., were sent to A-1 through courier and A-1 <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc. delivered these drugs to the customers identified by Prakash Kataria or A-4 which was done through A-3 through A-1 of S.T. Courier.

9. It is the further case of the prosecution that A-4 filed bail application and prayed to enlarge him on bail on medical grounds in which the prosecution filed a detailed counter submitting that the quantity of contraband seized are of commercial quantity which attracts Section 37 of the NDPS Act and the twin conditions laid down in Section 37 having not been fulfilled by A-4 and further the fact that jail hospital is available for inmates with all the facilities to take care of the medical exigencies of the inmates, the bail application was strenuously opposed. However, the Special Judge, without considering the quantity of contraband seized from various places and the bar for bail u/s 37 of the NDPS Act, granted interim bail to A-4.

10. Aggrieved by the said order, the prosecution preferred Crl. O.P. No.9298/20 against the grant of interim bail and this Court, vide order dated 18.9.20 in Crl. M.P. No.4246/20 in Crl. O.P.

No.9298/20 set aside the order passed by the learned Special Judge.

<https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

11. Aggrieved by the above order, A-4 once again preferred bail petition in Crl. M.P. No.1436/20 before the Special Court for bail on the ground that no psychotropic substances/drugs were seized from his house or office and there is no evidence apart from his statement u/s 67 of the NDPS Act, which is inadmissible in evidence. Though counter was filed in detail explaining the incriminating materials available against A-4 in the form of Whatsapp details and chats between A-1 and A-4 regarding the sending of tablets outside India, which was enclosed in the complaint, the Special Court, without considering all the incriminating materials available before it and without taking into consideration the quantity of the contraband seized, which attracts the bar u/s 37 of the NDPS Act, relying on the decision of the Hon'ble Supreme Court, which held that the statement u/s 67 of the NDPS Act cannot be relied upon in view of the bar u/s 25 of the Evidence Act and further, no link having been established between A-4 and A-1 to A-3 and no contraband having been seized from the person or place of A-4, held that the prosecution has not proved its case held that A-4 is not guilty of the offence and further holding that the twin test contemplated u/s 37 of the NDPS Act stood complied with, enlarged A-4 on bail. Assailing the said order, the present petition is filed by the prosecution for cancellation of bail granted to A-4. <https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

12. A-1 to A-3, from whose place the contraband is alleged to have been seized by the officials of DRI, too filed petitions before the Addl. Special Judge, Special Court under the EC & NDPS Act and there bail applications having been rejected in view of the bar u/s 37 of the NDPS Act, have filed the respective petitions before this Court praying for grant of bail contending that the allegations levelled against them pertain to their collusion with A-4 in the procurement and transportation of the contraband at the behest of A-4 and A-4 having been granted bail by the Principal Special Judge, Special Court under the EC & NDPS Act, are equally entitled for similar consideration.

13. Learned Special Public Prosecutor appearing for the official respondent submitted that the Special Court wholly misdirected itself in the appreciation of the material while granting bail to A-4. It is the submission of the learned Special Public Prosecutor that the court below has tried to try the case, not as a bail petition, but as if hearing the case finally and the appreciation of the evidence by the trial court, during consideration of bail, is wholly erroneous.

14. It is the submission of the learned Special Public Prosecutor that bar is only to placing reliance on the statement of an accused, recorded while in <https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc. custody, but not to relying to the statement of the other accused, who have implicated A-4 in the offence. The evidence of the other accused in implicating A-4 could very well be taken as a link and at the time of hearing of the bail petition, it is only the prima facie evidence that needs to be looked into by the trial court and not the whole of the evidence to arrive at a finding, as it is only during trial the prosecution has to prove its case to the satisfaction of the Court. It is the further submission of the learned Special Public Prosecutor that the Section 37 mandates non-grant of bail if the quantity of contraband involved is a commercial

quantity and in the case on hand, the quantity of contraband being a commercial quantity and A-4 having not fulfilled the twin tests mandated u/s 37 of the NDPS Act, the finding of the trial court that no contraband was recovered from the person or place of A-4 and, therefore, the link of the contraband to A-4 has not been made out, is wholly erroneous as it is only during trial, through oral and documentary evidence, the prosecution has to prove its case and not at the time of bail. Further, the contraband seized from A-1 to A-3 which has been procured and sent to them by A-4 and one Prakash Kataria has been spoken to clearly by A-1 to A-3 and all the three have pointed finger on A-4 and their statements needs to be tested at the time of trial and the act of the trial court to give a clean chit to A-4 without even looking at the other evidence is wholly erroneous. <https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

15. It is the further submission of the learned Special Public Prosecutor that the finding recorded by the trial court that in the absence of receipt of report of the contraband, keeping A-4 under custody is unsustainable. It is the submission of the learned Special Public Prosecutor that the report of the analysis has revealed that the contraband are narcotic substances, which falls under the schedule to the NDPS Act and the act of A-4 in routing the same through A-1 to A-3 under the guise of herbal/ayurvedic preparation not only shows the devious mind of A-4, but also his ingenuity to evade the same being tracked by the officials of DRI and Customs.

16. It is the further submission of the learned Special Public Prosecutor that A-1 to A-3 have implicated A-4 as being the person, who was the kingpin in the transportation of the contraband and only based on their statements, A-4 was apprehended. The trial court wholly misdirected itself in holding that the statement of A-4 cannot be relied on to establish a charge against A-4 as in fact the prosecution had merely relied on the statements of A-1 to A-3 who have pointed a finger at A-4 and the prosecution is not estopped in relying on their statements to implicate A-4. The decision of the Hon'ble Apex Court, relied on by <https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc. the trial court, has only pointed out that the statement of the accused recorded under the NDPS Act is akin to the statement recorded u/s 25 of the Evidence Act and cannot be relied on for the purpose of proving the case against the accused. However, in the present case, the prosecution has relied on the statements of A-1 to A-3 to fasten liability on A-4 and, therefore, relying on the decision of the Hon'ble Supreme Court is wholly erroneous.

17. It is the further submission of the learned Special Public Prosecutor that it is not necessary to recover contraband from the person of A-4 and it is suffice if through cogent and convincing materials it could be established that A-4 had nexus with A-1 to A-3 in the transportation of the contraband. Those are issues, which could be tried by the trial court only at the time of trial and not at the time of hearing a bail petition. However, the trial court has gone beyond its brief and decided the issue that the non-recovery of any contraband from A-4 coupled with the statement of A-4, which cannot be relied on by the prosecution, A-4 is not guilty of the charges is wholly misconceived, as the trial court is not called upon to decide the innocence or guilt of an accused at the time of hearing a bail petition and it is only a prima facie satisfaction, which has to be recorded <https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc. for or against the accused. The finding of the trial court that A-4 is not guilty is wholly unsustainable.

18. It is the further submission of the learned Special Public Prosecutor that the twin tests contemplated u/s 37 of the NDPS Act where the contraband seized is of commercial quantity, the findings recorded by the trial court for the twin tests to have been fulfilled is wholly unsustainable. The basis for the twin tests said to have been complied with is the fact that the contraband was not seized from the person of A-4 and that he was not involved in packing, transporting or booking couriers. However, there is a finding that scientific report relating to the mobile phone seized from A-4 is yet to be received. In that scenario, the trial court was not justified in granting bail to A-4 more so on the premise that A-4 would not indulge in committing similar offence while on bail. There is no material available on record for the trial court to come to the said conclusion and it is only on mere surmises and conjectures the trial court has granted bail to A-4. The trial court, not only on fact, but also on law, has misdirected itself in granting bail to A-4, which requires to be cancelled by this Court.

<https://www.mhc.tn.gov.in/judis/>_____ CRL. O.P. Nos.18450/2020, etc.

19. Insofar as A-1 to A-3 are concerned, who have filed applications for bail, it is the submission of the learned Special Public Prosecutor that A-1 to A-3 had acted under the dictates of A-4 in packing, procuring and transporting the contraband and that the contraband had been seized from them and the quantity of contraband being commercial quantity, the bar u/s 37 gets attracted and, therefore, they are not entitled to bail and, accordingly, prays for dismissal of their bail petitions.

20. Per contra, learned senior counsel appearing for A-4 submitted that the trial court has considered all the issues raised by the prosecution and after proper analysis has come to the right conclusion that the prosecution has not placed materials, which prima facie point to the guilt of A-4 and, accordingly, enlarged A-4 on bail. It is the further submission of the learned senior counsel for A-4 that no contraband, which has been allegedly recovered, had been recovered from the person of A-4 and in that backdrop, the trial court has come to the right conclusion that the bar u/s 37 of the NDPS Act would not apply. In fact, the trial court has gone a step further and dwelt into the twin tests enumerated u/s 37 of the NDPS Act and the same having stood fulfilled, the trial court had granted bail to A-4. It is the further submission of the learned senior counsel that once bail <https://www.mhc.tn.gov.in/judis/>_____ CRL. O.P. Nos.18450/2020, etc. has been granted to an accused, unless conditions are not complied with or that there are supervening circumstances, which comes to light later, the bail granted to an accused should not be cancelled. It is the further submitted that Prakash Kataria, Prabhakaran and Sanjeev have not yet been apprehended, though A-1 to A-3 have alleged that they are also involved in the offence. It is submitted by the learned senior counsel appearing for A-4 that A-4 has been scrupulously complying with the conditions and no supervening circumstances having arisen from the date bail was granted to A-4, no interference is called for with the grant of bail ordered by the trial court.

21. The respective learned counsel appearing for A-1 to A-3, who, even according to the prosecution had aided A-4 in storing, packing and transporting the contraband, submits that the quantity, alleged by the prosecution to be commercial quantity, has not been proved by any materials, though the forensic analysis revealed that the consignments, which were confiscated by the officers of DRI was found to contain narcotic substances. It is the submission of the learned counsel for A-1 to A-3

that only on the basis of instructions from suppliers from Nagpur, Jaipur and Chennai, the products were packed, labelled and <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc. shipped to various foreign countries, as instructed by A-4, Prakash Kataria and Prabhakaran.

22. It is the further submission of the respective learned counsel for A-1 to A-3 that they are not aware of the nature of medicine, but wholly believed that the medicines were of herbal/ayurvedic and only on that premise, they had helped A-4 in packing and transporting the contraband. It is the submission of the learned counsel for A-1 that A-1 was in possession of a valid license for exporting and importing herbal/ayurvedic preparations and A-4, by misusing the license held by A-1 had tried to export contraband.

23. Learned counsel appearing for A-3 submitted that A-3 was merely an employee under A-1 and was in no way connected with the procurement, packing and transportation of the contraband and his only work was to receive the courier, which are addressed to A-1. Further, on the date, when the officials of DRI had conducted search in the premises of A-1, A-3 had no connection with A-1 as he had already tendered his resignation from the company ran by A-1. <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc.

24. Learned counsel appearing for A-2 submitted that A-2 had merely prepared the invoice and packing list as per the dictates of A-1, who usually received/procured the contraband from A-1 which were either couriered by A-4 or procured by A-1 himself from the various suppliers in his name or in the name of A-3. It is the submission of the learned counsel for A-2 that A-2 was in no way connected with the procurement and transportation of the contraband and was only an employee of the courier company, which received the packages from A-1 or A-3 for onward transit to the destination as mandated in the invoices. Therefore, implicating A-2 in the said offence when he is in no way involved either in the procurement, packaging and transportation of the contraband is wholly unsustainable and, therefore, this Court may grant bail to A-2.

25. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the various decisions relied on by the learned counsel for the parties.

26. The issue that arise in the present case is twin-fold - <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc. i) What are the circumstances under which bail once granted could be cancelled by the same Court or by a higher Court;

ii) Whether the bail granted could be cancelled even in cases where the accused has not flouted any conditions.

27. There is no quarrel that bail granted by the Court could be withdrawn either by the same court or by the higher court. However, the Courts exercise their power of cancellation of bail with care and circumspection. Normally, the courts refuse to cancel the bail, as it jeopardizes the personal liberty of the person and that the courts cancel the bail only when it finds on record a very cogent and

overwhelming circumstances which points a finger on the accused.

28. Section 439 (2) of Cr.P.C. clothes the Court with the power to deal with issue relating to cancellation of bail. The Supreme Court has enumerated the following supervening factors that justify cancellation of bail :-

- i) Interference or attempt to interfere with the due course of administration of justice;
- ii) Evasion or attempt to evade the due course of justice;
- iii) Abuse of the concession granted to the accused;

<https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

- iv) Possibility of the accused absconding;
- v) Likelihood of/actual misuse of bail;
- vi) Likelihood of the accused tampering with the evidence or threatening witnesses;
- vii) Other supervening circumstances, which have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by being on bail.

29. The courts should be more rigid in its examination of violation and proof of violation in matters relating to cancellation of bail. Various decisions of the Hon'ble Apex Court vests the courts with power and discretion to cancel bail even when there are no supervening circumstances and broadly classified, they could be brought under the following heads :-

- i) Where the court granting bail ignores relevant material and takes into account irrelevant material of substantial nature and not trivial nature;
- ii) Where the court granting bail overlooks the position of the accused qua the victim especially if the accused is in some position of authority such as a policeman and there is prima facie, a misuse of position and power, including over the victim.
- iii) Where the court granting bail ignores the past criminal record and conduct of the accused while granting bail;

<https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

- iv) Where bail has been granted on untenable grounds;
- v) Where the order granting bail suffers from serious infirmities resulting in miscarriage of justice;

vi) Where the grant of bail was not appropriate in the first place, given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified;

vii) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

(Emphasis Supplied)

30. From the above, it is amply evident that even if there are no supervening circumstances, even then the courts are empowered to cancel the bail granted to the accused. Therefore, the submission relating to A-4 strictly complying with the conditions relating to bail and that there are no other supervening circumstances, which necessitates cancellation of bail, cannot alone be the basis on which this Court is required to appreciate the issue relating to cancellation of bail.

<https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

31. In the above scenario, keeping the ratio laid down by the Hon'ble Supreme Court relating to cancellation of bail in mind, this Court would now proceed to analyse whether the trial court has applied its mind to the relevant material and the relevant legal provisions while granting bail to A-4.

32. The contention of the prosecution has been spelt out in detail supra. The attack is made to each and every aspect of the order passed by the trial court, which has held that the prosecution has not proved the case against A-4. In this regard, a perusal of the order passed by the trial court reveals that the said order runs to 25 pages. The main crux on which the trial court laid its mind to grant bail to A-4 is the fact that no recovery was made from the person of A-4, the statement of A-4 cannot be relied on for making out a case against A-4 in view of the bar u/s 67 of the NDPS Act, which is akin to Section 25 of the Evidence Act and that the FIR has been filed hastily, at the fag end of the period of limitation, in order to avoid grant of default bail to A-4 when none of the scientific reports have been placed for appreciation as to the nature of contraband.

<https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

33. To appreciate the above findings, it is necessary for this Court to peruse the said order. The sum and substance of the findings based on which the trial court has granted bail to A-4 is as under :-

i) Test Reports not forming part of the charge sheet and, hence, cannot be the basis for implicating A-4;

ii) Prakash Kataria, Sanjeev & Prabhakaran, who have been mentioned by A-1 to A-3 as persons, who had association with A-4 and who were supplying the contraband have not been arrested;

iii) A-1 to A-3 were not asked to identify A-4 and, therefore, identity of A-4 not established;

iv) The confession statement of A-4 recorded u/s 67 of the NDPS Act cannot be relied on by the prosecution to remand him; and

v) The link between A-1 to A-3 with A-4 as also the link of A-4 with the contraband has not been established.

<https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

34. Insofar as the argument of the learned senior counsel and the finding recorded by the trial court relating to Prakash Kataria, Sanjeev and Prabhakaran not being arrested, it is the submission of the learned Special Public Prosecutor that the whereabouts of the aforesaid three persons are not known and that the officials of the DRI are on the look out for those individuals. The persons are not present at the address which are available with the prosecution and, therefore, the persons have not been arrested. The said submission, in the considered opinion of the Court does not border on any fallacy, which favours A-4. It is not as if the prosecution is not on the look out for the aforesaid three persons. Even the order of the trial court is silent on the said aspect. The only finding recorded by the trial court is that the aforesaid three persons, who are said to have nexus with A-4 and that it is only the aforesaid three persons, who have supplied the alleged contraband to A-1 to A-3 and they have not been arrested and, therefore, in the absence of any proper connecting material, implicating A-4 in the offence is wholly erroneous. The trial court has recorded a finding that the A-4 is a Hindi speaking person from Jaipur and denies knowledge about A-1 to A-3. Merely because A-4 is a Hindi speaking person and denies knowledge about A-1 and A-3 is not a ground to doubt the veracity of the prosecution version. No finding has been recorded by the trial court that A-4 is not conversant with any other <https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc. language or that A-1 to A-3 are not conversant with the knowledge known to A-4. Therefore, the finding on the said aspect is fragile and unsustainable.

35. Insofar as the finding recorded by the trial court that the statement of A-4 cannot be the basis for his arrest and detention as the same is barred u/s 67 of the NDPS Act, the trial court has relied on the decision of the Hon'ble Supreme Court. This Court is in respectful agreement with the said ratio. However, what is required to be pointed out here is the fact that it is not on the basis of the statement of A-4, he has been arrested and detained, but rather, on the basis of the information given by A-1 to A-3, who had implicated A-4 as the person involved in the offence and that he was the kingpin, who had arranged the supply of the contraband and only as per his dictates, the contraband was being sorted, packed and transported, A-4 was arrested and remanded.

36. There is no bar envisaged u/s 67 of the NDPS Act not to rely on the statements of the co-accused for the purpose of arrest and remand. The necessity for the prosecution to establish through independent and conclusive evidence as to the involvement of A-4 in the commission of the offence comes only when the matter is taken up in trial. At the stage of bail, it is only a prima <https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc. facie case, which needs to be placed before the trial court upon which deliberation is made and satisfaction results in continued incarceration pending trial. It is not that the trial court should conduct a roving enquiry into all the materials for the purpose of deciding the culpability of A-4 in the commission of

an offence. It is suffice if a prima facie material is available, which points to the accused as the person, who has nexus in the commission of the offence and in that scenario, the gravity and ramification of the offence on the society is necessary to be gone into while deciding the case one way or the other. Further, the Hon'ble Supreme Court has not barred the prosecution agency from relying upon the statement of the co-accused for the purpose of apprehending the other accused in the offence. Evidence during trial and evidence during bail are two different matters and it cannot be decided on the same yardstick. The trial court has totally lost sight of the basic principles and elemental rules of criminal jurisprudence with regard to the reliance to be placed on the evidence of the co-accused. Further, even a cursory glance of the order of the trial court reveals that the trial court has conducted a roving enquiry to arrive at a finding as to grant bail to A-4 and has even gone on to state as to how else can a court record its satisfaction without delving into the merits of the case. <https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

37. It is to be pointed out that the trial court, while deciding the issue of grant of bail, is not required to delve deep into the merits of the issue but only to the limited extent of finding out whether a prima facie case has been made out by the accused for grant of bail. For arriving at the said satisfaction, it is not necessary for the trial court to delve deep into the merits of the issue, rather, it would suffice, if the trial court skims through the evidence in brief to find out whether the complicity of the accused in the commission of the crime is made out. The findings recorded by the trial court as to the bar u/s 67 of the NDPS Act is a total misreading of the provision of law as also the ratio laid down by the Hon'ble Supreme Court and the same is wholly unsustainable.

38. Curiously, the trial court has observed that on the date of filing the charge sheet, the scientific analysis report was not available and, therefore, the complaint/case filed by the prosecution is not complete, which warrants grant of bail to A-4 as the prosecution has neither seized any of the contraband from the person of A-4 nor proved that A-4 was in any way involved with the said contraband.

<https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

39. In this regard, useful reference can be had to the decision of the trial court, more especially at paragraph 15, wherein, the trial court has recorded as under :-

15. A perusal of records reveal that the first test report was received on 21.11.19 and it reveals that many of the tablets were sexual enhancement drugs and were not covered under NDPS Act. There was a second, third and fourth report received on 16.12.19 and 17.12.19 respectively. In para 12 of the complaint the respondent would submit that the Test Report for 26 samples sent to CFSL, Hyderabad is still awaited. Whiles, the learned counsel for the petitioner would name the complaint as incomplete and defective. This accused had been arrested only on 16.3.20 and he had never seen any of the tablets or contraband and none of the seizure was made before him or from him.

No sampling was ever done by the respondent in the presence of any of the accused.

40. It is to be pointed out that even as per the finding rendered above, test reports were available on 16.12.19 and 17.12.19. Even according to the said findings, the said test reports did not totally negate that the contrabands seized were not narcotic substances. From the samples tested so far, the report was <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc. given, which reveals that the contraband contains narcotic substances. A-4, even according to the trial court, was arrested only on 16.3.20. Further, it is to be pointed out that the trial court has lost sight of the total quantity of contraband alleged to have been seized from A-1 to A-3, which is said to have been received by A-1 to A-3 on the directions of A-4 from Prakash Kataria and Prabhakaran. The total quantity of contraband seized runs to around 1.38 lakhs tablets. Even the test reports show that in some of the tablets narcotic substance was present. That being the case, the finding recorded by the trial court that most of the tablets, which were sent for analysis were only sexual enhancement tablets is not borne out by record, as the quantity of the tablets sent alone cannot form the basis for the trial court coming to the conclusion as to the quantity of contraband seized. The test is conducted only to ascertain whether the contraband seized contain narcotic substance. May be at the time of filing the complaint the test reports may not have formed part of the charge sheet, but nevertheless for the purpose of bail, the said point cannot be a ground to grant bail to A-4 more so taking into consideration the quantity of contraband seized.

41. The case was heard and orders were pronounced on 2.11.2020 by which time the test reports were available before the Court. There is a finding to <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc. the aforesaid effect in the order passed by the trial court. That being the case, when there being no quarrel as to the availability of test reports on the date when the matter is under consideration of the trial court, for the grant of bail and considering the quantity of contraband involved, the finding recorded by the trial court that along with the complaint the test report was not available, which enures to the benefit of A-4 to release him on bail is beyond the comprehension of this Court.

42. The main ground on which the trial court has left A-4 to go scot-free is only on the basis of the fact that no seizure was made before him or from him. It is to be pointed out at this juncture that A-4 was apprehended and arrested only on the basis of the statements given by the co-accused, viz., A-1 to A-3. A-1 to A-3 have clearly implicated him as the mastermind in the procurement and transportation of the contraband to foreign countries. Therefore, from the above, it is explicitly clear that it is not on the basis of the statement of A-4, he has been implicated in the case, but rather on the basis of the statements of A-1 to A-3. Further, the scientific reports reveal the presence of narcotic substances in the contraband seized from A-1 to A-3, which, according to the statements of A-1 to A-3 was received by them from Prakash Kataria and Prabhakaran as per <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc. the directions of A-4. The statements of A-1 to A-3 implicate A-4 as the mastermind in the commission of the offence and merely because no contraband was seized from the person of A-4 cannot be a ground to grant bail to A-4. Further, it is to be pointed out that the mobile phone of A-4 has been confiscated and sent for forensic analysis. The arrest of A-4 is during the pandemic situation, viz., on 16.3.20 and merely because some forensic reports have not been received cannot alone be put against the prosecution to enlarge A-4 on bail when the gravity of the offence is of such a magnitude that it not only has major ramifications as to the life of many persons, but it also has a tendency to derail the

lives of the future generation of the country.

43. The other two grounds on which A-4 has been granted bail are that the prosecution has not established the link between A-1 to A-3 and A-4 and in the absence of the prosecution proving the said link, the trial court has come to a conclusion that the link has not been established by the prosecution and, therefore, the complicity of A-4 in the offence, as projected by the prosecution, stood extinguished. The said finding recorded by the trial court is preposterous. The necessity of the prosecution to connect all the links is only at the time of trial and at the time of consideration of bail, the prosecution is not required to reveal <https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc. all its hand, but for the statements of A-1 to A-3, which shows that A-1 to A-3 were following the directions of A-4 in procuring, processing, sorting, storing and transportation of the contraband. At the point of consideration of bail, A-4 has not shown any tangible material to prove that A-1 to A-3 had any axe to grind against him and, therefore, they have implicated him in the above case. Merely submitting that the link between A-1 to A-3 and A-4 has not been proved by the prosecution, has resulted in the trial court giving a beneficial order in favour of A-4, smacks with arbitrariness and mala fides.

44. Of all the above findings, the most curious of the finding and reasoning given by the trial court for granting bail to A-4 is on the ground that A-1 to A-3 have not identified A-4 and in the absence of such identification, the implication of A-4 in the offence has not been established. The reasoning assigned by the trial court not only defies logic, but is also new to criminal prosecution. Neither the investigative mechanism has such a procedure nor the criminal procedure code prescribes such a procedure for identifying the accused by the accused. Further, the trial court has taken aid of the language of A-4 and also the pleading of A-4 that he has no knowledge of A-1 to A-3 to give the benefit of bail to A-4. This Court is at a loss to understand the basis on which such a reasoning has been <https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc. assigned by the trial court. The said finding recorded by the trial court, in limine deserves outright rejection.

45. In the present case, it is the persistent case of the prosecution that the contraband seized numbers about 1.38 lakh tablets, which is much beyond the commercial quantity quantified in the relevant circulars and, therefore, A-4 is not entitled to bail in view of the bar envisaged u/s 37 of the NDPS Act.

46. The law on the above is well settled that in case the quantity of contraband seized is of commercial quantity, the bar imposed u/s 37 of the NDPS Act operates, but for the twin tests contemplated under the proviso to Section

37. The twin tests imposed are that the Public Prosecutor should be given an opportunity to oppose the application for such release and where such opposition is made, only on satisfaction that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail, the Court could consider enlarging the accused on bail.

<https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

47. A perusal of the order passed by the trial court reveals that the trial court has rendered a categorical finding that the twin tests contemplated u/s 37 of the NDPS Act stood satisfied. True it is that the Public Prosecutor has opposed the application for bail, thereby satisfying the first condition, however, the 2nd condition that there are reasonable grounds for believing that the accused is not guilty of such offence does not stand satisfied on the basis of the evidence available on record. In this regard, as discussed above, the trial court has just adverted to the materials that have not been placed by the prosecution, viz., the forensic analysis report of the contraband and the mobile phone of A-4 as also the non-identification of A-4 by A-1 to A-3 and the bar to rely on the statement of A-4 to implicate him in the offence and also non-seizure of contraband from the person of A-4, to record a finding that A-4 is not guilty of the offence. But the aforesaid findings, rendered by the trial court could in no way be termed to be reasonable grounds for believing that A-4 is not guilty of the offence. The nexus of A-4 with the commission of the offence should be of such a nature that no prudent person will have reason to believe that A-4 has committed the offence. However, the materials on which the trial court has arrived at its findings are materials which will have an impact at the time of trial and not at the time of hearing a petition for bail. In the above backdrop, the second test, which is the <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc. crucial test to determine whether A-4 could be granted bail or not does not in any way stand fulfilled and in such a scenario, the finding of the trial court that the twin tests stand fully satisfied fall short of acceptance and failure of the same definitely attracts the bar u/s 37 of the NDPS Act and, therefore, bail could not have been granted to A-4.

48. A careful analysis of the materials, as discussed above, fairly and conclusively establish that the supervening circumstances stares writ large on the face of the record. The trial court has granted bail ignoring the relevant material and taking into account irrelevant material and that bail has been granted on untenable grounds and the order of bail suffers from serious infirmities resulting in miscarriage of justice and given the serious nature of charges against the accused, more especially an offence under the NDPS Act and that the quantity of contraband seized being of commercial quantity, the trial court, on extraneous reasons, had granted bail, which ought not have been granted and in view of the aforesaid discussion and also the gravity of the offence and the quantity of contraband seized, this Court is of the considered view that the petition seeking cancellation of bail granted to A-4 deserves to be allowed. <https://www.mhc.tn.gov.in/judis/> _____ CRL. O.P. Nos.18450/2020, etc.

49. Insofar as the petitions filed by the petitioners, who are arrayed as A-1 to A-3 and remanded to judicial custody for the alleged offences u/s 8 (c) r/w 22 (C), 25, 28 and 29 of the NDPS Act, bail has been sought for by them on the ground that A-4 is the mastermind behind the whole process and that A-1 to A-3 are just instruments, who are following the dictates of A-4 and in view of A-4 having granted bail, they should also be enlarged on bail.

50. However, this Court, for the reasons aforesaid, has cancelled the bail granted to A-4 in Crl. O.P. No.18450/20. The petitioners in Crl. O.P. Nos.6056, 6115 and 6224/2021 also being similarly placed on all counts and that the contraband, which has been seized from them being commercial quantity, the bar u/s 37 of the NDPS Act stand attracted and, therefore, they are not eligible to be enlarged on bail. The trial court has rightly dismissed their application for bail on the ground that they were in

possession of contraband, which is of commercial quantity and in such a backdrop, this Court is of the considered view that the petitioners in Crl. O.P. Nos.6056, 6115 and 6224/2021 are not entitled to be enlarged on bail and their bail applications deserve to be dismissed.
<https://www.mhc.tn.gov.in/judis/>_____CRL. O.P. Nos.18450/2020, etc.

51. In the result,

i) Crl. O.P. No.18450/2020 filed by the prosecution for cancellation of bail granted to A-4 is allowed;

ii) Crl. O.P. Nos.6056, 6115 and 6224/2021 filed by the petitioners, who are arrayed as A-1 to A-3 are dismissed.

Index : Yes / No
Internet : Yes / No
GLN

<https://www.mhc.tn.gov.in/judis/>

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CRL. O.P. Nos.18450/2020

To

1. The Intelligence Officer
Directorate of Revenue Intelligence
Chennai Zonal Unit
No.27, G.N.Chetty Road, T.Nagar
Chennai 600 017.
- 2.The Special Public Prosecutor
NDPS Cases, High Court
Chennai.
3. The Prl. Special Judge
Special Court for EC & NDPS Act Cases
Chennai.

<https://www.mhc.tn.gov.in/judis/>

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CRL. O.P. Nos.18450/2020, etc.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
CRL. O.P. NOS.18450 OF 2020
CRL. O.P. NOS. 6056, 6115
& 6224 OF 2021

Pronounced on
15.07.2021

<https://www.mhc.tn.gov.in/judis/>