

Sri Anand Natarajan vs The Intelligence Officer on 3 December, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

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NC: 2024:KHC:50067
CRL.P No. 2012 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 2012 OF 2024

BETWEEN:

SRI ANAND NATARAJAN
S/O NATARAJAN
AGED ABOUT 49 YEARS
R/AT NO.55/70
NARAYANA MAISTRY STREET
OTTERI, CHENNAI
TAMILNADU - 600 012.

...PETITIONER

(BY SRI MUZAFFAR AHMED, ADV.)
AND:

THE INTELLIGENCE OFFICER
DIRECTORATE OF REVENUE
INTELLIGENCE, BANGALORE
ZONAL UNIT, RPT. BY SPECIAL

Digitally
signed by
NANDINI MS
Location:
High Court of
Karnataka

PUBLIC PROSECUTOR
NO.8(2)P OPP BDA COMPLEX

HBR LAYOUT, KALYAN NAGAR
POST, BANASWADI
BANGALORE - 560 043.

...RESPONDENT

(BY SRI MADHU N RAO, ADV.)

THIS CRL.P IS FILED U/S 439 CR.PC PRAYING TO ENLARGE PETITIONER / ACCUSED NO.1 IN DRI/BZU/S-IV/ENQ-20 (INT-NIL) / 2023 (CRIME NO.20/2023) REGISTERED BY THE DRI, BANGALORE ZONAL UNIT FOR ALLEGED OFFENCES P/U/S 8(c) R/W 21, 23, 28 AND 29 OF NDPS ACT, 1985, PENDING ON THE FILE OF XXXIII ADDL. CITY CIVIL AND SESSIONS JUDGE

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AND SPECIAL JUDGE (NDPS) (CCH-33) AT BENGALURU IN SPL.C.C.NO.2900/2023, BY IMPOSING ANY CONDITIONS TO THE SATISFACTION OF THIS HONBLE COURT.THE XXXIII ACC SJ AND SPL. JUDGE (NDPS), BENGALURU HAS REJECTED THE BAIL PETITION ON 08.02.2024 IN SPL.C.C.NO.2900/2023.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused in Spl.CC.No.2900/2023 pending before the Court of XXXIII Addl. City Civil and Sessions Judge and Special Judge for NDPS Cases, Bengaluru, arising out of DRI/BZU/S-IV/ENQ-20/INT-HNIL/2023 (Crime No.20/2023) registered by the Directorate of Revenue Intelligence, Bengaluru Zonal Unit, for the offences punishable under Sections 8(c), 21, 23, 28 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act' for short), is before this Court under Section 439 of Cr.P.C.
2. Heard the learned counsel for the parties.
3. It is the case of prosecution that on 16.06.2023, the Intelligence Officer of DRI, Bengaluru, on receipt of credible NC: 2024:KHC:50067 information that one Indian National was attempting to smuggle narcotic substance into the country through a passenger known as Anand Natarajan, having passport number (S4920987), who was scheduled to arrive in Bengaluru from Addis Ababa in a Ethiopian Airways flight, apprehended the said person at the Bengaluru Airport after he had cleared his immigration. The said person namely Anand Natarajan was having two check-in baggage and one trolley bag and when the said check-in trolley bag, which had a baggage tag ID No.ET249256 was scanned, it was found that the said bag contained contraband substance in the base layer of the trolley bag. The officer cut open the bottom of the trolley bag and recovered a plastic cover which was concealed in a secret layer of the said trolley bag and from the said cover, 2.22 kgs of white colour powder was recovered and tested with the help of the Field Test Kit and the presence of narcotic drug known as Cocaine was noted. The contraband article which was recovered was thereafter subjected to panchanama and the apprehended accused and the seized contraband

article were brought to the office of the respondent and after arresting him, he was produced before the jurisdictional Court and subsequently NC: 2024:KHC:50067 remanded to judicial custody. Bail application filed by the petitioner before the jurisdictional Sessions Court in Spl.CC.No.2900/2023 was dismissed on 08.02.2024. Therefore, he is before this Court.

4. Learned counsel for the petitioner submits that petitioner, who is aged about 49 years, has no other criminal antecedents. He is in custody for the last nearly more than 18 months. The trial in the case is yet to commence. Other accused persons have been enlarged on bail in the present case. Considering the aforesaid aspects of the matter and the period of incarceration of the petitioner, he prays to allow the petition. In support of his arguments, he has placed reliance on the following judgments of the Hon'ble Supreme Court:

(i) Chitta Biswas Alias Subhas vs. State of West Bengal

- 2020 SCC OnLine SC 1536.

(ii) Man Mandal and Another vs. State of West Bengal -

2023 SCC OnLine SC 1868.

(iii) Ankur Chaudhary vs. State of Madhya Pradesh - 2024 SCC OnLine SC 2730.

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(iv) Hasanujjaman and Ors. vs. The State of West Bengal - Special Leave to Appeal (Crl.) No.3221/2023 dated 04.05.2023.

5. On the other hand, learned counsel for the respondent, who has filed statement of objections has seriously opposed the petition. He submits that merely for the reason that petitioner is in custody for the last more than 18 months, he cannot be enlarged on bail, having regard to the rigour under Section 37(1)(b) of the NDPS Act. He submits that period of incarceration itself cannot be a ground for enlarging the accused on bail and in support of his arguments, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Narcotics Control Bureau vs. Mohit Aggarwal - (2022) 18 SCC 374. He submits that judgments on which reliance has been placed by learned counsel for the petitioner is rendered by a Bench of two Judges of the Hon'ble Supreme Court while the judgment in the case of Mohit Aggarwal (supra) has been rendered by a Bench of three Judges of the Hon'ble Supreme Court and therefore, the judgment in the case of Mohit Aggarwal (supra) holds the field.

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6. Based on credible information received, petitioner was intercepted at Bengaluru International Airport on 16.06.2023 when he arrived from Addis Ababa in an Ethiopian Airways flight and from the trolley bag which he had checked-in with ID bearing No.ET249256, the Officers of the

respondent had recovered 2.22 kgs of contraband article allegedly cocaine which had tested positive when the same was tested with the Field Test Kit by the Officers. Subsequently, petitioner was arrested on 17.06.2023 and produced before the jurisdictional Magistrate and remanded to judicial custody. On the basis of the alleged confession statement made by petitioner, accused Nos.2 and 3 were subsequently arrested and after completion of investigation, complaint was filed totally against five accused persons. During the course of investigation, petitioner allegedly had confessed to the crime and he has stated that since he was facing serious financial problems, his friend Gokul had introduced him to one A K Balamurugan, who offered him a job of bringing some parcel from Ethiopia and also promised to give good remuneration for the same. Therefore, petitioner allegedly had traveled to Ethiopia and had stayed in a hotel at Addis Ababa from 06.06.2023 to 15.06.2023 and on 15.06.2023, one NC: 2024:KHC:50067 Joe had handed over him trolley bag which was to be handed over to Dinesh after reaching Bengaluru.

7. On 16.06.2023, when petitioner arrived from Addis Ababa at Bengaluru Airport, he was apprehended and from his possession 2.22 kgs of contraband article cocaine was seized. It is not in dispute that the petitioner has no other criminal antecedents. According to the petitioner, since he was facing financial problems, he had agreed for the job offered and had traveled to Ethiopia and brought the trolley bag which was handed over to him, for which A K Balamurugan had promised to pay a sum of Rs.40,000/- to him. He is in custody from 16.06.2023. Investigation in the case is completed and charge sheet has been filed against five accused persons. Accused No.2 has been granted regular bail by this Court in Crl.P.No.10491/2023 and accused No.3 has been granted regular bail by this Court in Crl.P.No.8866/2023. Accused Nos.4 and 5 are said to be in custody in some other case and their presence is not secured in the present case by the Trial Court till date. The charges in the case have not yet been framed by the Trial Court till date. Petitioner, who has no other criminal antecedents is in custody for the last more than 18 months.

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8. The twin conditions that needs to be considered by the Courts in view of rigour under Section 37(1)(b) of the NDPS Act are, Court's satisfaction that accused might not be guilty of the alleged offences and upon release, the accused are not likely to commit any offence. Undisputedly, petitioner has no other criminal antecedents and he is aged about 49 years. In his confession statement, he has clearly stated that it is only because of his financial condition, he had gone to Ethiopia for the purpose of bringing the parcel since he was offered a good remuneration by A K Balamurugan. Therefore, there is no reason for this Court to believe that the petitioner is likely to commit similar offences in the event of his release on bail.

9. In the case of Chitta Biswas Alias Subhas vs. State of West Bengal reported in 2020 SCC OnLine SC 1536, the Hon'ble Supreme Court taking into consideration that the accused was in custody for a period of one year seven months and there was no sufficient progress in trial, without expressing any opinion on merits and demerits of the case, has granted regular bail to the accused. In the case of Nitish Adhikary alias Bapan vs. State of West Bengal reported in NC: 2024:KHC:50067 2022 SCC OnLine SC 2068 in a case where charge sheet was filed for the offences punishable under Sections 21(c) and 37 of the NDPS Act and accused was in custody for a period of one year seven months, the

Hon'ble Supreme Court has granted regular bail on the ground that trial is still in the preliminary stage, as only one witness was examined.

10. In the case of Hasanujjaman (supra), where the accused were charge sheeted for the offences punishable under Section 21(C)/29 of the NDPS Act, the Hon'ble Supreme Court for the reason that arrested accused were in custody for more than one year and four months, without expressing any view on the merits of the case, regular bail was granted.

11. In the case of Ankur Chaudhary (supra), wherein charge sheet was filed against accused for the offences punishable under Section 8 read with Sections 22 and 29 of the NDPS Act, the Hon'ble Supreme Court taking into consideration that accused was in custody for the last more than two years while granting bail, has observed that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right

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NC: 2024:KHC:50067 guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered. In the said case, some of the witnesses were already examined before the Trial Court whereas in the present case, the trial is yet to commence and the petitioner is in custody for the last nearly 18 months.

12. Learned counsel for the respondent has placed strong reliance on the judgment of the Hon'ble Supreme Court in the case of Mohit Aggarwal (supra) and has referred to paragraph No.19 of the said judgment, which reads as follows:-

"19. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."

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13. In the case of Mohit Aggarwal (supra), accused was granted bail for the reason that nothing was found from the possession of accused and therefore, he is not guilty of the offences for which he was charged. The Hon'ble Supreme Court taking into consideration that in addition to the confession statement of accused, disclosure made by respondent accused had led the NCB officers to arrive at and raid the godown, which resulted in recovery of a large haul of different psychotropic substances

and it is under said circumstance, the Hon'ble Supreme Court had held that the High Court was not justified in granting bail to respondent/accused with an observation that since nothing was found from the possession of respondent/accused, he cannot be found to be guilty of the offences for which he has been charge sheeted. The Hon'ble Supreme Court therefore observed that such an observation would be premature at that stage and the High Court was not justified in granting bail.

14. In the judgments of the Hon'ble Supreme Court on which reliance has been placed by learned counsel for the petitioner, bail has been granted to accused who have been charge sheeted for the offences punishable under the

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NC: 2024:KHC:50067 provisions of the NDPS Act where commercial quantity of contraband article was recovered only for the reason that they are incarcerated for a considerable period of time and the chance of trial being completed in the near future is remote. In the case on hand, petitioner is in custody for the last nearly 18 months and the trial in the case is yet to commence. Prosecution has till date failed to secure the presence of co- accused i.e., accused Nos.4 and 5 and totally 11 charge sheet witnesses have been cited. Under the circumstances, the chances of trial being commenced and completed in the immediate near future is very remote. Therefore, I am of the opinion that the prayer made by the petitioner, who is aged about 49 years and has no other criminal antecedents needs to be answered affirmatively without expressing any opinion on merits and demerits of the case. Accordingly, the following order:-

15. The petition is allowed. The petitioner is directed to be enlarged on bail in Spl.CC.No.2900/2023 pending before the Court of XXXIII Addl. City Civil and Sessions Judge and Special Judge for NDPS Cases, Bengaluru, arising out of DRI/BZU/S- IV/ENQ-20/INT-HNIL/2023 (Crime No.20/2023) registered by

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NC: 2024:KHC:50067 the Directorate of Revenue Intelligence, Bengaluru Zonal Unit, for the offences punishable under Sections 8(c), 21, 23, 28 and 29 of the NDPS Act, subject to the following conditions:

- a) Petitioner shall execute a personal bond for a sum of Rs.1,00,000/- with two sureties for the likesum, to the satisfaction of the jurisdictional Court;
- b) The petitioner shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts his appearance for valid reasons;
- c) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;
- d) The petitioner shall not involve in similar offences in future;

e) The petitioner shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against him is disposed off.

Sd/-

(S VISHWAJITH SHETTY) JUDGE DN