

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

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

CRL.OP.No.19359 of 2020

P.Kiran Kumar

...Petitioner/Accused-4

vs.

State by

The Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai - 600 077.

R.R.No.4 of 2019

(NCB F.No.48/1/4/2019-NCB/MDS 929)

...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 439 of Cr.P.C., to enlarge the petitioner on bail in C.C.No.146 of 2019 on the file of the Principal Sessions Judge, EC and NDPS ACT, Chennai in R.R.No.4 of 2019 in NCB 48/1/4/2019-NCB/MDS 929 on the file of the respondent.

For Petitioner : Mr.K.Sivakumar

For Respondent : Mr.N.P.Kumar

Special Public Prosecutor

ORDER

The petitioner who was arrested and remanded to judicial custody on 13.07.2019 by the respondent police for alleged offences under Section 8(c) read with Section 20(B)(ii)(c), 27(A), 28 and 29 of the NDPS Act, 1985, seeks bail.

2.This is the third petition filed by the petitioner/fourth accused seeking bail. The first bail petition was dismissed on 30.09.2019. The second bail petition was dismissed on 09.03.2020.

3.The petitioner/fourth accused has been arrested by the respondent Police on 13.07.2019 for alleged offences under Section 8(c) read with Section 20(B)(ii)(c), 27(A), 28 and 29 of the NDPS Act, 1985 and had been remanded to the judicial custody on the same day. The petitioner has been in the incarceration for the past 498 days as on 23.11.2020.

4.The case of the prosecution is that the respondent Police had seized 2 Kgs of Brown Black Colour Oil which was later confirmed to be Hashish Oil in concentrated form from the first and second accused who had brought it from Visakhapatnam on 04.04.2019 at Padi, Chennai. Based on the their statements, the respondent Police further seized 420 gms of similar substance/liquid/oil from the residence of the third accused.

5.Based on the confession statement under Section 67 of the NDPS Act of the third accused, the role of the present petitioner was determined and the petitioner was also arrested and arrayed as the fourth accused.

6.The specific case of the prosecution as against the present petitioner is that he had transferred a sum of Rs.1,20,000/- through three bank transactions to one Vantala Krishna who had supplied the contraband and the said amount was used by the first and second accused to procure the contraband and to transport the same to Chennai from Visakhapatnam.

7.Mr.K.Sivakumar, learned counsel for the petitioner/accused stated that the petitioner herein is running a hotel in T.Nagar in the name of "Andra Mess" and he has a current account for business purpose. The petitioner herein knew the first accused since the first accused was an Event Manager. Learned counsel stated that the petitioner transferred the amount to the transferee, Vantala Krishna purely for business purposes. The learned counsel also stated that even on earlier occasions, amounts had been transferred to the said Vantala Krishna by the petitioner in the months of February and March for his business purposes.

8.The learned counsel further stated that the transferee/beneficiary of the said amount namely Vantala Krishna had not been named as an accused nor cited as a witness in the Final Report filed by the prosecution. The learned counsel stated that the confession statement of the third accused should not be believed because though the third accused had been taken in custody on 04.04.2019 and statements have been recorded on 04.04.2019 and on 05.04.2019, it was only on 16.04.2019 that the name of the petitioner herein had come to the knowledge of the prosecution.

9.The learned counsel therefore stated that, particularly taking into account very long period of incarceration, and the further probability, owing to the fact that the transferee of

the amount to Vantala Krishna had not been added as an accused or cited as a witness, there is a strong possibility that the petitioner could be acquitted and therefore stated that the bar under Section 37 of the NDPS Act would not come in the way of the Court granting the relief sought for.

10.The learned counsel stated that the number of witness are only ten in number and PW1 had been examined in part in chief and therefore stated that alternatively a direction may be issued to the Trial Court namely learned Principal Sessions Judge, EC and NDPS ACT, Chennai to complete the trial within a specific time period.

11.Mr.N.P.Kumar, learned Special Public Prosecutor on the other hand stated that in the Final Report itself it had been very specifically stated that if further information comes to the knowledge of the investigation relating to the role played by any other accused, then they would file an additional complaint or additional charge sheet.

12.The learned Special Public Prosecutor wondered the reasons as to why the petitioner transferred huge amounts of money to a stranger and pointed out the first and second accused had very specifically stated that the said individual/transferee of the amounts, had supplied the contraband seized from the first and second accused and also seized from the residence of the third accused.

13.The learned Special Public Prosecutor stated that the petitioner had also an earlier case but the learned counsel for the petitioner/accused countered that statement by saying that the petitioner had been acquitted in the earlier case.

14.It was also stated by the learned Special Public Prosecutor that not only were the amounts transferred to the account of Vantala Krishna but the petitioner had also facilitated the travelling expenditure of the first and second accused from Chennai to Visakhapatnam and back.

15.It was also stated that the contentions raised by the learned counsel could be tested during trial.

16.The learned Special Public Prosecutor very strongly opposed granting bail to the petitioner.

17.I have carefully considered the arguments advanced.

18.It is the case of the prosecution that about 2 Kgs of Brown Black Colour Oil which was later confirmed to be Hashish Oil were seized from the first and second accused at Padi on the

outskirts of Chennai. On examination of the said accused, they informed that they had brought the said oil from Visakhapatnam. Based on their statement, a further quantity of 420 gms of similar Hashish Oil was recovered from the residence of the third accused. As seen from the records the third accused not only named the petitioner but also identified the photograph of the petitioner. The third accused had very specifically stated that it was the petitioner who paid the supplier of the contraband at Visakhapatnam.

19.It is also the case of the prosecution that the petitioner also financed the travelling expenses of the first and second accused from Chennai to Visakhapatnam and from Visakhapatnam, back to Chennai.

20.The fact that the prosecution had not arrayed Vantala Krishna as an accused had not cited him as a witness is an issue which has to be examined during the trial. I am confident that the learned counsel would address this aspect during the course of trial.

21.At this stage, the statement in the charge sheet that if and when the role of any further accused is determined then the prosecution would take necessary steps to file an additional complaint /additional charge sheet alone can be considered by the Court.

22.With regard to the direction to the Trial Court to dispose of the case within a reasonable period of time, I have my own reservations.

23.There is admittedly pendency of the cases owing to the lockdown of Courts due to Covid-19 pandemic. The Court will have to work overtime to complete not only the backlog work, but also the trial in other cases wherein directions have given to complete the trial within a specific time limited.

24.In view of that situation, I will only request the learned Trial Judge, to bestow his personal attention and if the witnesses are available and if the counsels for the petitioner/accused co-operate by coming forward to cross-examine the witnesses immediately after the chief examination is conducted, to give shorter adjournment dates for this particular case to ensure that it is completed within a reasonable period of time.

25.I am not inclined to grant the relief sought for.
Accordingly, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

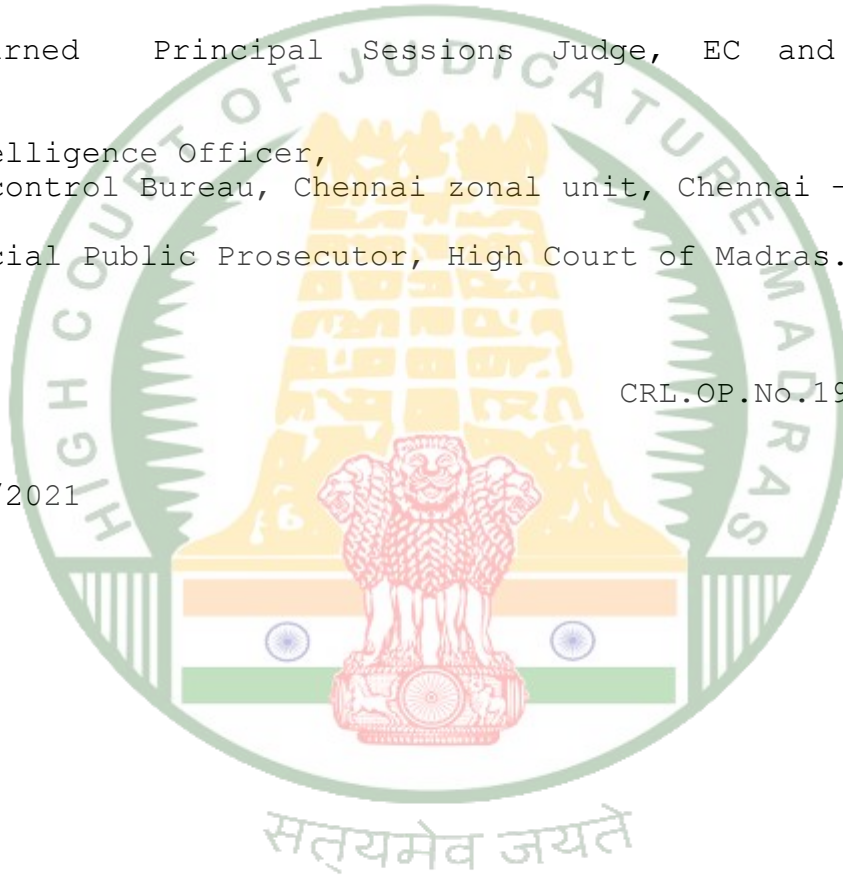
pam

To

- 1.The learned Principal Sessions Judge, EC and NDPS ACT,
Chennai.
- 2.The Intelligence Officer,
Narcotic control Bureau, Chennai zonal unit, Chennai - 77.
- 3.The Special Public Prosecutor, High Court of Madras.

CRL.OP.No.19359 of 2020

RP(CO)
KKV/08/01/2021



WEB COPY