

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.01.2021

CORAM :

THE HON'BLE MR. JUSTICE V. BHARATHIDASAN

CrI.O.P.No.363 of 2021

Sarathkumar

... Petitioner

Vs.

The State of Tamil Nadu
Rep. by Inspector of Police
T15, SRMC Police Station
Chennai-600 056.
(Crime No.773 of 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.773 of 2020 pending investigation on the file of the Respondent.

For Petitioner : Mr.S.Illamvaludhi

For Respondent : Mrs.M.Prabavathi
Addl. Public Prosecutor

O R D E R

(The case has been heard through video conference)

Totally, there are three accused in this case and the petitioner is arrayed as 2nd accused. The petitioner, who was arrested and remanded to judicial custody on 25.07.2020 for the offence punishable under Sections 8(c), 20(b)(ii)(C) and 25 of NDPS Act in Crime No.773 of 2020, seeks bail.

2. The case of the prosecution is that on secret information, the respondent police had searched a two wheeler, in which the petitioner and other accused are travelling and found that A1 in this case was in possession of 1 kg. ganja, and also seized a sum of Rs.25,000/- after following due procedures. So far as this petitioner is concerned, the respondent police had seized a sum of Rs.15,100/- along with his cellphone and subsequently, based on the confession of A1, another 30 kg. ganja was recovered from his house, the petitioner was arrested and remanded to judicial custody on 25.07.2020. In the said circumstances, the criminal case was registered against the petitioner.

3. Mr. S.Illamvaludhi, learned counsel appearing for the petitioner would submit that the petitioner is arrayed as 2nd accused. Even as per the F.I.R., contraband was seized only from A1 and from the petitioner, a sum of Rs.15,100/- along with his cellphone was seized and no ganja was seized. He would submit that the petitioner is in judicial custody for more than five months. He would also

submit that even as per the F.I.R., the petitioner has only went to purchase ganja from A1 and only money was seized from the petitioner. He would further submit that 30 kgs. of ganja was recovered from A1's house only and not from the petitioner. Hence, he seeks for grant of bail to the petitioner.

4.The learned Additional Public Prosecutor would oppose to enlarge the petitioner on bail on the ground that while A1 and A2 are traveling in a two wheeler, the respondent police have intercepted and on search, A1 was found in possession of 1 kg. ganja, and it was seized. He would submit that so far as the petitioner is concerned, a sum of Rs.15,100/- was seized along with cellphone. Since both the accused were travelling in a motorcycle, both of them were found in possession of 1 kg. ganja. Subsequently, on the confession of A1, another 30 kgs. of ganja has been seized and both the petitioner and A1 have jointly in possession of more than 30 kgs. of ganja. Hence, he opposed to grant bail to the petitioner.

5. On perusal of records as well as F.I.R., it could be seen that A1 is the main accused and he has been indulged in selling ganja. The petitioner said to have met A1 for purchasing the ganja and he was in possession of Rs.15,100/-. At that time, only money was seized from the petitioner, and admittedly, ganja was seized from A1. Thereafter, on the confession of A1, the ganja was seized from A1's house. Taking into consideration of the fact that the A1 is the main accused and entire ganja has been recovered from A1. The petitioner is only said to have intended to purchase the ganja and no ganja was recovered from the petitioner and the petitioner is in jail for more than five months. Therefore, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Poonamallee, and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner, on his release from prison, shall report before the respondent police daily at 10.30 a.m. until further orders;

(d) the petitioner shall not commit any offences of similar nature;

(e) the petitioner shall not abscond either during investigation or trial;

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

6. With the above directions, this Criminal Original Petition is ordered.

-sd/-

20/01/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.I, POONAMALLEE

2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR(FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
T15. SRMC POLICE STATION,
CHENNAI- 600 056.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI,
CHENNAI

CC to M/S S.ILLAMVALUDHI Advocate on payment of necessary charges sr.572

CRL OP.363/2021

Date :20/01/2021

RVR 21/01/2021