

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

Crl.O.P.Nos.2417 & 3202 of 2021

B.Sikdhar Ali

... Petitioner in
Crl.O.P.No.2417/2021

J.Stalin

... Petitioner in
Crl.O.P.No.3202/2021

Vs.

State by

The Inspector of Police,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai.

... Respondent in
both Crl.O.P.s

PRAYER in Crl.O.P.No. 2417 of 2021 : Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in NCBF No.48/1/10/2020/NCB/MDS/1585-A on the file of respondent police for the alleged offence under Section 20(b)(ii)(B), 28, and 29 of NDPS Act, 1985.

PRAYER in Crl.O.P.No. 3202 of 2021 : Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in C.C.No.07 of 2021 pending trial before the learned Principal Special Judge for EC and NDPS Act, Chennai in R.R.No.54 of 2020 on the file of respondent.

For Petitioner in

Crl.O.P. No.2417/2021 : Mr.A.Thirumaran

For Petitioner in

Crl.O.P. No.3202/2021 : Mr.V.Sambamurthy

For Respondent in

both Crl.O.P.s : Mr.N.P.Kumar,
Special Public Prosecutor
for NCB Cases

C O M M O N O R D E R

(The case has been heard through video conference)

So far as the petitioner in Crl.O.P.No.2417 of 2021 is concerned, the petitioner, who was arrested and remanded to judicial custody on 18.10.2020 for the offence punishable under Sections 20(b)(ii)(B), 28 and 29 of NDPS Act, 1985 in NCBF No.48/1/10/2020/NCB/MDS/1585-A on the file of respondent police,

2. So far as the petitioner in CrI.O.P.No.3202 of 2021 is concerned, the petitioner, who was arrested and remanded to judicial custody on 18.10.2020 for the offence punishable under Sections 20(b)(ii)(B), 28 and 29 of NDPS Act, 1985 in C.C.No.07 of 2021 pending trial before the learned Principal Special Judge for EC and NDPS Act, Chennai in R.R.No.54 of 2020, on the file of respondent, seeks bail.

3. The case of the prosecution is that both the petitioners have sent 10.650 kgs. of ganja by Professional courier to some other address. On information, the respondent police has seized the materials from the courier office and both of them were arrested on 18.10.2020 and they were remanded to judicial custody. Accordingly, a criminal case was registered against the petitioners. Now, seeking bail, the present petition has been filed.

4. The learned counsel appearing for petitioner would submit that the ganja was not seized from the petitioners and only a parcel was seized from the professional courier and on information from the courier office, the petitioners were arrested. He would submit that except their confession, there is no material available to implicate the petitioners. He would submit that the petitioners were in jail for more than five months and the investigation is also completed. He would also submit that the materials, which is seized is in-between quantity and absolutely there is no offence made out under Sec.27-A of NDPS Act. That apart, the respondent police also not followed the mandatory requirements. Hence, he prayed to grant bail to the petitioners.

5. Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the respondent would submit that these petitioners have involved in transporting ganja. He would submit that on an information from the courier office, the respondent police had seized the parcel and found that there was 10.650 kgs. of ganja therein. He would submit that subsequently, on investigation, when the petitioners have went to receive the parcel, they were arrested and they have given the confession before the respondent to that effect. The learned counsel would further submit that investigation is yet to be completed and if the petitioner released on bail, they will tamper with the witnesses and opposed to grant bail.

6. I have heard and considered the rival submissions made by the learned counsel appearing for petitioners as well as Special Public Prosecutor appearing for respondent.

7. On perusal of the records, it could be seen that the parcel was seized from the courier office by the respondent and found that it has contained 10.650 kgs. of ganja. On investigation, it was found only the petitioners have sent the parcel. Thereafter, based on their confession, they were arrested. Even though, originally, a criminal case was registered under Section 27-A of the NDPS Act, on investigation, it was found that the above provision is not attracted in this case. The total quantity is only 10.650 kg., it is only in-between quantity, and now, the investigation is almost completed.

8. Considering the fact that the petitioners were in possession of only 10.650 kg. of ganja, which is an in-between quantity, they have no previous bad antecedents, and also considering the period of incarceration suffered by the petitioners from 18.10.2020, this Court is inclined to grant bail to the petitioners subject to the following conditions:

(a) Accordingly, the petitioners are ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Principal Special Court under EC and NDPS Act, Chennai 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 petitioners, on their release from prison, shall report before the respondent police daily at 10.30 a.m. until further orders;

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

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

(f) the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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/-

22/02/2021

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 PRINCIPAL SPECIAL COURT
UNDER EC & NDPS ACT, CHENNAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI.

3 THE SPECIAL PUBLIC PROSECUTOR
FOR NCB CASES, HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
NARCOTICS CONTROL BUREAU,
CHENNAI ZONAL UNIT,
CHENNAI

+1CC to Mr.A.THIRUMARAN Advocate on payment of necessary charges SR NO.2063

+1CC to Mr.V.Sambamurthy Advocate on payment of necessary charges SR NO.2054

CRL.OP.NOS.2417 & 3202 2021

Date :22/02/2021

MK:23/02/2021

WEB COPY