

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 01.03.2021

Orders Pronounced on : 12.03.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

CrI.O.P.No.5876 of 2020

Ruthran

... Petitioner

-Versus-

State Rep. by

The Inspector of Police,

NIB - CID, Chennai.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in C.C.No.136 of 2019 on the file of the learned I Additional Special Court for Exclusive Trial of Cases under the NDPS Act, Chennai.

For Petitioner : Mr.P.Pandiyaraj

For Respondent : Mrs.M.Prabhavathi

Additional Public Prosecutor

O R D E R

(The case was heard through video conference)

The Petitioner, who was arrested and remanded to judicial custody on 05.04.2018 for the offence punishable under Sections 8 (c) r/w 20(b)(ii)(c), 25, 27(A) and 29(1) of The Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.21 of 2018 which was subsequently, on filing the final report, taken cognizance and has been pending in C.C.No.136 of 2019 on the file of the I Additional Special Court, NDPS Act cases, seeks bail.

2. There are totally three accused involved in this case and the petitioner has been arrayed as A2. The case of the prosecution is that on 05.04.2018, on the basis of a secret information that ganja is being transported from Andhra Pradesh in a car, after getting permission from the higher police officer, the respondent police mounted surveillance in their area. On suspicion, when the respondent police intercepted a car bearing Regn. NO. TN 04 AJ 4098, the occupants of the car, on seeing the police, stopped the car at a distance and got down from the car and fled away from the place. On search, the respondent police found that 111.62 Kgs of ganja was smuggled in the car. Thereafter, the case came to be registered against unknown accused.

3. It is the further case of the prosecution that when A1 in this case was arrested by Usilampatti Police in connection with some other case, he confessed his involvement in the instant case and also the involvement of the petitioner and other accused. On the basis of the confession of A1, the petitioner was made as accused in this case. Thereafter, the petitioner and the other accused were arrested and remanded to judicial custody. The petitioner is in custody for more than two years. Seeking bail, the petitioner has come forward with the instant petition.

4. The learned counsel for the petitioner would submit that the petitioner was implicated only on the basis of confession of A1 and except the confession of A1, there is no other material available on record to connect the petitioner with the crime. The learned counsel would further submit that A1 on whose confession the petitioner was made as accused and arrested, had been granted bail by this court, by order dated 22.08.2019 in CrI.O.P.No. 19667 of 2019, on the ground that except his confession no other materials available to connect A1 with the crime. The petitioner is in judicial custody for more than two years and he is ready to abide by any conditions that may be imposed by this court in the event of granting bail.

5. The learned counsel for the petitioner in support of his contention would place reliance heavily upon a recent judgement of the Hon'ble Supreme Court in Tofan Singh v. State of Tamil Nadu, 2020 SCC OnLine SC 882 wherein the Hon'ble Supreme Court has laid down that a statement made before an officer under Section 53 of NDPS Act without any corroborating evidence cannot be made basis for conviction.

6. Per contra, the learned Additional Public Prosecutor would submit that the petitioner was made as accused only the basis of a confession made by A1 when he was arrested in connection with some other case by Usilampatti Police and at the instigation of A1, the petitioner and the other accused, procured the contraband and smuggled it from Andhra Pradesh for sale in Tamil Nadu. The learned Additional Public Prosecutor would further submit that the case is pending for trial and there is likelihood of the petitioner absconding, in the event of granting bail to him at this stage and fleeing from justice.

7. I have considered the rival submissions carefully.

8. Admittedly, the petitioner was made as accused only on the basis of confession of A1. He has been in judicial custody for more than two years. A1 on whose confession the petitioner was made as accused had already been granted bail by this court as early as on 22.08.2019 by order in CrI.O.P.No.19667 of 2019 on the ground that confession alone cannot be made basis for convicting an accused in the absence of any corroborating evidence. So far as this petitioner is concerned, this court is of the prima facie view that except the confession of co-accused(A1), no other evidence available as of now to connect him with the crime.

9. Thus, considering the above position and also on considering the fact that co-accused on whose confession this petitioner was made as accused had been granted bail in the year 2019 itself and the period of incarceration of the petitioner, this Court is inclined grant bail to the petitioner subject to certain 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 I Additional Special Court for Exclusive Trial of Cases under the 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 petitioner 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.

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

-sd/-
12/03/2021

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 I ADDITIONAL SPECIAL COURT FOR
EXCLUSIVE TRIAL OF CASES UNDER THE NDPS ACT,
CHENNAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI.

3 THE SPECIAL PUBLIC PROSECUTOR (DRI CASES),
HIGH COURT, MADRAS, CHENNAI.

4 THE INSPECTOR OF POLICE,
NIB-CID, CHENNAI.

+1CC to M/S.P.PANDIYARAJ Advocate on payment of necessary
charges SR NO.3274

सत्यमेव जयते CRL OP.5876/2020

Date :12/03/2021

MK:15/03/2021

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