



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.16301 of 2021

Khaja Mydeen

... Petitioner

Vs.

The Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai.
(NCB F.No.48/1/01/2021NCB.MDS)

... Respondent

PRAYER: Criminal Original petition has been filed under Section 439 of Cr.P.C, prayed to enlarge the petitioner on bail in C.C.No.124 of 2021 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

For Petitioner : Mr.M.S.Charles

For Respondent : Mr.P.Kumar
Special Public Prosecutor(NCB cases)

ORDER

The petitioner, who was arrested and remanded to judicial custody on 16.01.2021, by the respondent police for the offences under Section 9A r/w 25A, 23 and 29 NDPS Act, seeks bail.

2. The case of the prosecution is that on specific information from the informant on 16.01.2021, the respondent went to Modern Stores at Maraimalai Nagar, Chengalpattu District, where the respondent found that the petitioner along with other accused were in possession of 45 kgs of white colour crystal powder substance, believed to be of Ephedrine. The same was seized by the respondent resulting in the registration of the case against the petitioner and the other accused.

3. The learned counsel appearing for the petitioner submitted that the petitioner did not commit any offence as alleged by the prosecution and he is innocent of the said commission of offence and he has been falsely implicated in this case. Further, the seized drugs is neither narcotic drug nor psychotropic substance. It comes under 'controlled substances'. Therefore, Section 37 of NDPS Act is not



attracted for considering the bail. Since, the co-accused had already been enlarged on bail, the learned counsel prays to grant bail to the petitioner also.

4. The learned Special Public Prosecutor fairly conceded that the substance seized is not a narcotic substance and it is only a controlled substance. It is also conceded that co-accused was enlarged on bail in CrI.O.P.No.7865 of 2021, vide order of this Court dated 05.05.2021.

5. Counter affidavit of the respondent has been filed by the learned Special Public Prosecutor and submitted that Khaya Mydeen (petitioner herein) and Kadar Meeran in their voluntary statement dated 16.01.2021 under Section 67 NDPS Act, have admitted their guilt of trafficking 45 kgs of Ephedrine and based on their confession, some incriminating documents and material objects were seized on 15.01.2021 and 16.01.2021 and thereby the accused have committed offences under Section 9A r/w 25A, 23, 28 and 29 NDPS Act. The petitioner has also been implicated in an earlier NCB case in Hyderabad, wherein 4.5 kgs of Pseudo ephedrine have been seized. Therefore, it shows that the petitioner is a habitual offender and the prosecution is not implicating the accused persons on their statements alone, but also on the seized materials and documents, which attracts the rigour of Section 37 NDPS Act. Hence, if the petitioner is released on bail, he may tamper with the witnesses and hamper the investigation and, therefore, he vehemently objected to releasing the petitioner on bail.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. Considering the fact that the seized substance is neither a narcotic nor a psychotropic substance and also taking into account the period of incarceration and also the pandemic situation and the co-accused also having been released on bail, and also taking into account the fact that Section 37 of the NDPS Act would not stand attracted to this case as the substance seized is not a contraband within the meaning of Section 37 of the NDPS Act, this Court is inclined to grant bail to the petitioner with conditions.

8. Accordingly, the petitioner is ordered to be released on bail on his execution of a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and on further condition that:

(a) the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;



(b) the petitioner shall report before the respondent police daily at 10.30 a.m. until further orders;

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

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

(e) on breach of any of the aforesaid conditions, the learned 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 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]; and;

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

-sd/-
05/10/2021

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 SPECIAL JUDGE
I ADDITIONAL SPECIAL COURT FOR EXCLUSIVE
TRIAL OF CASES UNDER NDPS ACT CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

3 THE INTELLIGENCE OFFICER,
NARCOTIC CONTROL BUREAU,
CHENNAI ZONAL UNIT,
CHENNAI.



4 THE SPECIAL PUBLIC PROSECUTOR FOR NCB CASES,
HIGH COURT, MADRAS

CC to M/S. M.S.CHARLES Advocate on payment of necessary charges

CRL OP.16301/2021

Date :05/10/2021

APN 06/10/2021