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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.545 of 2022

Arun

... Petitioner

Vs.

The State by
The Inspector of Police,
H1 Washermenpet Police Station,
Chennai
(Crime No.2271 of 2021)

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in C.C.No.276 of 2021 on the file of the Principal Special Court under EC & NDPS Act, Chennai.

For petitioner : Mr.B.Kumarasamy

For Respondent : Mr.N.S.Suganthan
Government Advocate (Crl. Side)

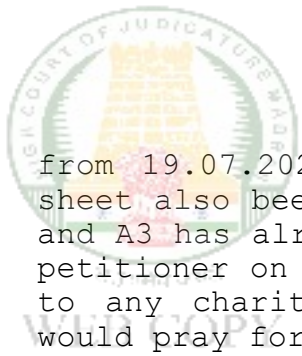
ORDER

(The case has been heard through video conference)

The petitioner who was arrested and remanded to judicial custody on 19.07.2021 for the offences under Sections 22(c), 8(c), 20(b), (ii)(B) 25, 29(i) of NDPS Act, in Crime No.2271 of 2021, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 18.07.2021, at about 01.30 p.m., on secret information the respondent police officials went to the spot and intercepted the petitioner and others and found that they are in possession of 1.6 Kg of Ganja and 0.554 grams of Nitrovet-10 tablets (Totally 1110 tablets). Hence, the complaint.

3.The learned counsel for the petitioner would submit that the petitioner is arrayed as A4 and he has not committed any offence as alleged by the prosecution. He would further submit that the petitioner has been suffering incarceration for more than 175 days



from 19.07.2021 and the investigation is also completed and charge sheet also been filed. He would further submit that the co-accused A2 and A3 has already been released on bail in the courts below and the petitioner on his own volition ready to deposit a substantial amount to any charitable institute as may be directed by this Court and would pray for grant of bail to the petitioner.

4. The learned Government Advocate (Crl. Side) would raise strong objection stating that the petitioner and others were found in possession of 1.6 Kg of Ganja and 0.554 grams of Nitrovet-10, totally 1110 tablets, but admits that the investigation is completed and charge sheet also filed. He would further submit that the petitioner has got one previous case.

5. In this case, the question is whether the quantity attracts the rigors of Section 37 of the NDPS Act; when the quantity is less than commercial, as admittedly so in this present case, the rigors of Section 37 of the NDPS Act will not attract and factors become similar to bail petitions under regular statutes.

6. Considering the above facts and the submission made by the learned counsel for the petitioner, this Court is of the opinion that the petitioner shall be directed to make a non refundable deposit of Rs.15,000/- (Rupees Fifteen Thousand Only), to the credit of the Tamil Nadu Advocate Clerks Association, Chennai, without prejudice to his rights and contentions. The amount so deposited shall be utilised by the Association for the welfare of the Advocate clerks.

7. It is made clear that the deposit of the amount by the petitioner to the said Association would not amount to admission of guilt. The trial Court shall deal with the case independently on merits without reference to the amount deposited at the stage of bail.

8. Further, considering the fact that co-accused has been released on bail and also investigation is completed and also considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner with certain conditions.

(a) Accordingly, the petitioner is ordered to be released on bail on executing his own bond for a sum of Rs.10,000/- (Rupees ten thousand only), before the Superintendent of the concerned prison, in which the petitioner have been confined and thereafter on his release;

(b) the petitioner shall make non-refundable deposit a sum of Rs.15,000/- (Rupees Fifteen Thousand Only), through demand draft to the Tamil Nadu Advocate Clerks Association, Chennai,



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without prejudice to his defence before the trial Court and on such deposit, the petitioner shall execute two sureties for a sum of Rs.10,000/- (Rupees Ten Thousand only) each, before the learned 1st Additional Principal Special Court under EC & NDPS Act, Chennai, within 15 days from the date of commencement of the Court's normal functioning, failing which the bail granted by this Court shall stand dismissed automatically;

(c) 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;

(d) the petitioner shall report before the respondent police on every Tuesday and Sunday at 10.30 a.m, until further orders;

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

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

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

(h) 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];

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



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

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19/01/2022

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 1ST ADDITIONAL PRINCIPAL
SPECIAL COURT UNDER EC & NDPS ACT, CHENNAI.

2 THE INSPECTOR OF POLICE,
H1, WASHERMENPET POLICE STATION,
CHENNAI

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL-II, CHENNAI.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 TAMIL NADU ADVOCATE CLERKS
ASSOCIATION, CHENNAI.

+1 CC to M/S B.KUMARASAMY Advocate on payment of necessary
charges SR.NO.818

CRL OP.545/2022

Date :19/01/2022

JPA 21/01/2022