



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

CrI.O.P.No.1991 of 2022

Gnanaraj

...Petitioner

Vs.

The State rep. by
The Inspector of Police
M-4 Redhills Police Station,
Chennai.
(Crime No.3301 of 2020)

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in Crime No.3301 of 2020 on the file of the respondent police.

For Petitioner : Mr.B.Kumarasamy

For Respondent : Ms.G.V.Kasthuri
Additional Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioner who was arrested and remanded to judicial custody on 13.07.2020 for the offences under Sections 8(c), r/w 20(b) (ii) (c) r/w 25, 29 (i) of NDPS Act, 1985, in Crime No.3301 of 2020, on the file of the respondent police, seek bail.

2. The case of the prosecution is that on 13.07.2020, the petitioner was found in possession of 42 Kgs of Ganja. Hence, the complaint.

3.The learned counsel for the petitioner would submit that during the time of registering the case and also during the time, when the contraband materials were recovered, the respondent police has not followed the mandatory provisions of the NDPS Act. He further submits that co-accused has already been granted bail by this Court in CrI.O.P.No.2724 of 2022, dated 04.02.2022. He further submits that



the respondent police after completing investigation laid the charge sheet before the trial Court and the petitioner is in judicial custody on 13.07.2020. Hence, he prays for bail.

4. Ms.G.V.Kasthuri, learned Additional Public Prosecutor appearing for the respondent police, raised objection stating that during the relevant point of time, the petitioner along with another accused, who is now released on bail, possessed with 42 Kgs of Ganja. However, he admits as of now, the investigation was completed and the charge sheet has also been filed.

5. The submissions made by the learned counsel on either side are considered.

6. Admittedly, after recovering the contraband from the accused the purity test has not been conducted. In this case, the the Hon'ble Division Bench of this Court while disposing of Crl.A(MD).No.256 of 2009, dated 23.12.2011, observed as follows:

"26(i) If the contraband seized is either a mixture or a preparation with or without a neutral materials, of any Narcotic Drug or Psychotropic Substance falling within the scope of entry No.239 of the modification dated 19.10.2001 issued in S.O.No.1055 (E) of the Central Government, it is absolutely necessary to conduct purity test to ascertain the exact quantity of the Narcotic Drugs/Psychotropic Substance contained in the said mixture of preparation. In the absence of purity test, as indicated, the contraband seized shall be construed only as a small quantity and accordingly, the accused shall be liable for punishment."

7. Accordingly, in this case also the Investigation officer has not proceeded the case, after observing the necessary formalities and the petitioner is in judicial custody from 13.07.2020 and the co-accused has been released on bail.

8. Considering the facts and circumstances of the case and also by considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner with conditions.

(a) the petitioner is ordered to be released on bail to execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Special Judge, 1st Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai.

(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 trial Court daily at 10.30 a.m. until further orders;

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

(e) 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];

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

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

-sd/-

10/02/2022

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 SPECIAL JUDGE,
1ST ADDITIONAL SPECIAL COURT FOR EXCLUSIVE
TRIAL OF CASES UNDER NDPS ACT, CHENNAI.

2 THE INSPECTOR OF POLICE,
M-4, REDHILLS POLICE STATION,
CHENNAI.

3 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

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

+2 CC to B.KUMARASAMY Advocate on payment of necessary charges
SR.NO.2175

CRL OP.1991/2022

Date :10/02/2022

INBA~11/02/2022