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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Cr1.O.P.No.3450 of 2022

Murugan

...Petitioner/A1

Vs.

The State rep. By
The Inspector of Police
NIB CID, Chennai
(Crime No.5 of 2020)

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Criminal Procedure Code, praying to enlarge the petitioner on bail in C.C. No.83 of 2020 pending trial before the Principal Sessions Judge for NDPS Act Cases, Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj

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

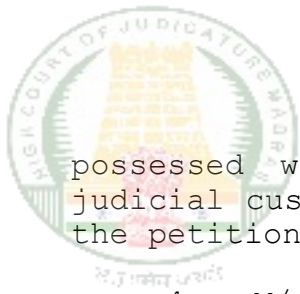
ORDER

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 01.02.2020 for the offences under Section **8(c) r/w 20 (b) (ii) (c) and 29(i) of NDPS Act** in Crime No.5 of 2020, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 01.02.2020 at about 04.00 a.m., the respondent police went to Egmore railway station and found the petitioner that he is in the illegal possession of 22 Kgs of 'Ganja'. Hence the complaint.

3.The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that it is the case of the prosecution that during the relevant point of time, the petitioner/A1 possessed with one gunny bag of 'ganja' estimated as 22 kgs without any purity test and therefore it cannot be said the petitioner is



possessed with 22kgs of 'Ganja'. Further, the petitioner is in judicial custody from 01.02.2020 onwards. Hence, he prays for bail to the petitioner.

4. M/s.G.V.Kasthuri, learned Additional Public Prosecutor appearing for the respondent police vehemently objected for allowing this petition. However, she admits after recovering the contraband in order to find out the real quantity, purity test has not been conducted.

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

6. The respondent police registered a case against the petitioner for the offence punishable under Section **8(c) r/w 20 (b) (ii) (c) and 29(i) of NDPS Act**. It is the case of the prosecution that the petitioner possessed with 22 kg of ganja. Admittedly after recovering the contraband, no purity test is conducted. In this regard., the Hon'ble Division Bench of this Court while disposing the CrI.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 01.02.2020. Taking notice of all the above said aspects into consideration, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) the petitioner is ordered to be released on bail on executing 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 learned Principal Sessions Judge for NDPS Act cases, Chennai.**



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(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 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.

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

-sd/-
25/02/2022

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 PRINCIPAL SESSIONS JUDGE
FOR NDPS ACT CASES, CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.



3 THE INSPECTOR OF POLICE,
NIB CID, CHENNAI.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

+1 CC to M/S.R.C.PAUL KANAGARAJ Advocate on payment of
necessary charges SR.NO.2988

CRL OP.3450/2022

Date :25/02/2022

TA-28/02/2022