



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2022

CORAM:

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.9448 of 2022

WEB COPY

1.Mohammed Jalil Khan
2.Jeherul islam

.. Petitioners

Vs.

The Inspector of Police,
NIB CID,
Chennai.
(Crime No.106 of 2019)

.. Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C praying to enlarge the petitioners on bail in C.C.No. 106 of 2020 on the file of the Principal Special Judge, NDPS Act, Chennai in Crime No.106 of 2019 pending on the file of the Inspector of Police, NIB CID, Chennai.

For Petitioners: Mr.T.S.Sasikumar

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

O R D E R

The petitioners, who were arrested for the offences punishable under Sections 8(c) read with 20(b)(ii)(c), 29(1) of NDPS Act, 1985 in Crime No.106 of 2019, on the file of the respondent police, seek bail.

2.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor.

3.It is a case of recovery of 15 Kg of Ganja from the from the first petitioner and 10 kg of Ganja from the second petitioner. On 25.10.2019, the said recovery was made on pursuant to the specific information received by the respondent police that two persons are likely come to central station carrying Ganja. The petitioners herein are now seeking bail, on the ground that the prosecution has completed investigation and filed final report and examination of witness likely to commence during the month of May, who have an effective defence that the petitioners may be released on bail.



4.The learned Additional Public Prosecutor opposes granting of bail and has filed counter stating that the total weight of the contraband seized in the process exceeds commercial quantity and there is prima facie case against this petitioners for conviction. Hence, the final report filed and charges also framed by the competent Court, further it is also stated that the petitioners hail from Assam and if they released on bail, they may not be available for trial.

5.The learned counsel for the petitioners would specifically contended that, what was recovered from these two petitioners is not a commercial quantity, the recovery was under two different mahazar and even according to the alleged confession statement of the first accused, the contraband was entrusted to them individually by one Amiruth Jamal. As far as these two petitioners are concerned, there is no consensus or to have joint possession of contraband.

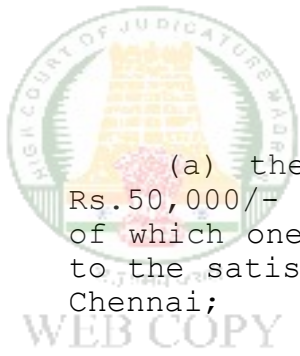
6. In support of the learned counsel for the petitioners submission, the confession statement of A-1 alleged to have been recorded during the course of investigation produced for perusal.

7.This Court finds force in the submission made by the learned counsel for the petitioners, though single FIR has been filed regarding the recovery of 25 Kg of Ganja from these petitioners, the case of the prosecution as well as the evidence collected indicates that the seized contraband was entrusted on a person named Amiruth Jamal of Assam and the first petitioner has borrowed Rs.10,000/- for his medical expenses from the said Amiruth Jamal as fit procurator agreed to carry 15 Kg of Ganja to be delivered to the person, who will be available on his arrival at Chennai. The said Amiruth Jamal has engaged the second petitioner and has entrusted 10 Kg of Ganja to him in the absence of any material to show that the contraband seized were jointly possessed by both the petitioners.

8.This Court considers that they were in possession of the respective quantity of Ganja independently and therefore the rigor of Section 37 of NDPS Act will not apply.

9.Considering the other objections raised by the learned Additional Public Prosecutor, since the petitioners hail from Assam and the case is right for trial to be commenced on 05.05.2022, this Court is inclined to grant bail to the petitioners.

10. Accordingly, the petitioners are ordered to be released on bail subject to the following conditions;



(a) the petitioners shall execute separate bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) each with two sureties out of which one must be a Government servant surety each for a like sum to the satisfaction of the learned Principal Special Judge, 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 petitioners are directed to appear before the trial Court on all working days till the conclusion of the trial;

(d) the petitioners 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 petitioners 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];

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

-sd/-

28/04/2022

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 SPECIAL JUDGE
NDPS ACT, CHENNAI

2 INSPECTOR OF POLICE
NIB CID, CHENNAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.



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

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CC to M/S.T.S.SASIKUMAR
charges Sr.6448

Advocate on payment of necessary

CRL OP.9448/2022

Date :28/04/2022

RVR 29/04/2022