



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Sixth day of June Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice G.K. ILANTHIRAIYAN

CRIMINAL ORIGINAL PETITION Nos.11343, 11350 & 11500 of 2022

SATHISH @ MANGA SATHISH

[PETITIONER / ACCUSED
IN CRL.O.P.No.11343/2022]

KUMURUDEEN

[PETITIONER / ACCUSED
IN CRL.O.P.No.11350/2022]

GURUPRASATH

[PETITIONER / ACCUSED
IN CRL.O.P.No.11500/2022]

Vs

STATE OF TAMIL NADU
REP. BY THE INSPECTOR OF POLICE
H5, NEW WASHERMENPET POLICE STATION,
CHENNAI.
CRIME NO.2126 OF 2021

[RESPONDENT
ALL THE PETITIONS]

For Petitioners : M/S. M. ILLIYAS Advocate
[ALL THE PETITIONS]

For Respondent : MR.A.DAMODARAN, Additional public Prosecutor
[ALL THE PETITIONS]

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner in all the petitions, who were arrested and remanded to judicial custody on 30.09.2021, 08.10.2021 & 22.01.2022 respectively, for the offence under Sections 8(c), 20(b)(ii)(B), 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, (herein after called as "NDPS Act") in C.C.No.100 of 2022 on the file of the learned Principal Court under EC & NDPS Act, Chennai, connecting with the Crime No.2126 of 2021 on the file of the respondent police, seek bail.



2.The petitioner in CrI.O.P.No.11343 of 2022 is the first accused, the petitioner in CrI.O.P.No.11350 of 2022 is the third accused and the petitioner in CrI.O.P.No.11500 of 2022 is the second accused in this case.

3.The case of the prosecution is that on 30.09.2021, based on the secrete information, the respondent Police went to the place of occurrence and they found that the petitioners were selling Ganja to other persons. On seeing the respondent police, the second and third accused escaped from the spot. When the respondent Police conducted a check up on the first accused, he was found in possession of 2 Kg Ganja and Nitravet-10 tablets 84 sheets each containing 15 tablets, totally 1260 tablets which contains total weight of 705 grams. Hence, the case was registered as against the petitioners.

4.The learned counsel appearing for the petitioners would submit as per the case of the prosecution, the first accused was found in possession of the contraband and only on the confession statement of the first accused, the second and third accused were arrested and remanded to judicial custody. Except the confession statement of the first accused no other material to show that the second and third accused were committed the offence under the NDPS Act. He also produced several orders passed by this Court and the Hon'ble Supreme Court of India, considering the said ground for grant of bail. He also produced the final report filed in the present case and it revealed that the first accused was in possession of the contraband and the third accused voluntarily surrendered before the concerned Court. On the strength of the confession statement of the first accused, the second accused has been arrested and remanded to judicial custody. Hence, he prays for grant of bail to the petitioners.

5.The learned Additional Public Prosecutor would submit that there are totally three accused in which the petitioners are arrayed as A1 to A3. The first accused was found in possession of 2Kg of Ganja and Nitravet-10 tablets 84 sheets each containing 15 tablets, totally 1260 tablets which contains total weight of 705 grams and it is a commercial quantity. Therefore, there is a bar under Section 37 of the NDPS Act and they are not entitled for grant of bail. He also submitted that as far as the first accused is concerned, there are ten previous cases and the second accused is involved in nine previous cases and the third accused is having six previous cases. Though the second and third accused were arrested on the basis of the confession statement given by the first accused, they had bad antecedent. Now, the investigation is completed and the trial is pending in C.C.No.100 of 2022 on the file of the learned Principal Court under EC & NDPS Act, Chennai. Hence, he vehemently opposed to grant bail to the petitioners.



6. On perusal of the confession statement of the first accused, he was found in possession of the contraband. The contraband involved in this case is the Nitrovit-10 tablets 84 strips each containing 15 tablets, totally 1260 tablets which contains total weight of 698.04 grams and 2Kg of Ganja. As per the NDPS Act, Nitrovit-10 above 500 gms comes under commercial quantity. Therefore, Section 37 of the NDPS Act applies and therefore without satisfying the twin conditions laid down under Section 37 of the NDPS Act, the first accused is not entitled for bail. Hence, the Criminal Original Petition in Crl.O.P.No.11343 of 2022 is dismissed.

7. As far as the second and third accused are concerned, they are implicated only on the confession statement of the first accused. Admittedly, there were not found in possession of any contraband as alleged by the prosecution. It has been held by the Hon'ble Supreme Court of India in the case of Tofan Singh Vs. State of Tamil Nadu reported in (2021) 4 SCC 1 that the confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrest made by the respondent police on the basis of the confession/voluntary statements of the first accused under Section 67 of the NDPS Act, cannot form the basis for the dismissal of the bail petition.

8. Considering the above facts and circumstances of the case, as far as the petitioners in Crl.O.P.Nos.11350 & 11500 of 2022 are concerned, they satisfy this Court with regard to the twin conditions laid down in Section 37 of the NDPS Act and this Court is inclined to grant bail to the petitioners.

9. Accordingly, the petitioners in Crl.O.P.Nos.11350 & 11500 of 2022 are ordered to be released on bail on their executing a separate bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two blood related sureties, each for a like sum to the satisfaction of the Principal Court under EC & NDPS Act cases, Chennai, and on further conditions that :-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioners in Crl.O.P.Nos.11350 & 11500 of 2022 shall report before the respondent police daily twice at 10.30 a.m., and 5.30 p.m., until further orders.

[c] the petitioners in Crl.O.P.Nos.11350 & 11500 of 2022 shall not abscond either during investigation or trial.



[d] the petitioners in Crl.O.P.Nos.11350 & 11500 of 2022 shall not tamper with evidence or witness 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 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 abscond, a fresh FIR can be registered under Section 229A IPC.

-sd/-
06/06/2022

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 COURT UNDER
EC & NDPS ACT CASES, CHENNAI.

2 THE INSPECTOR OF POLICE
H5, NEW WASHERMENPET POLICE STATION,
CHENNAI.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+2 CC to M/S. M. ILLIYAS Advocate on payment of necessary charges SR.NOS.8509 & 8910

CRL OPs.11343, 11350 & 11500 of 2022

Date :06/06/2022

JPA 08/06/2022



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