



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Thirteenth day of June Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice G.K. ILANTHIRAIYAN

CRIMINAL ORIGINAL PETITION Nos.11516, 11539 & 11558 of 2022

KHAJA NAWAS [PETITIONER / ACCUSED
IN CRL.O.P.No.11516/2022]

KADHAR MOHIDEEN [PETITIONER / ACCUSED
IN CRL.O.P.No.11539/2022]

ROHITH MANIKANDAN [PETITIONER / ACCUSED
IN CRL.O.P.No.11558/2022]

Vs

STATE REP. BY [RESPONDENT
THE INSPECTOR OF POLICE IN ALL PETITIONS]
H5-NEW WASHERMENPET POLICE STATION,
CHENNAI
CRIME NO.155 OF 2022

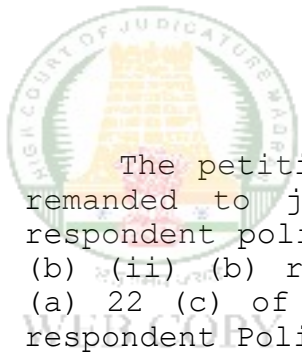
For Petitioner : MR.R.JOHN SATHYAN, Advocate for
M/S.R.RAFI BABU Advocate
[CRL.O.P.Nos.11516 & 11539/2022]

M/S.C.BALAJI, Advocate
[CRL.O.P.No.11558/2022]

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

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-



The petitioner in CrI.O.P.No.11516 of 2022, who was arrested and remanded to judicial custody on 10.03.2022 at the hands of the respondent police for the offences punishable under Sections 8(c), 20 (b) (ii) (b) r/w 22 (a) of NDPS Act @ 8 (c), 20 (b) (ii) (b) r/w 22 (a) 22 (c) of NDPS Act, in Crime No.155 of 2022 on the file of the respondent Police, seeks bail.

2.The petitioner in CrI.O.P.No.11539 of 2022, who was arrested and remanded to judicial custody on 09.03.2022 at the hands of the respondent police for the offences punishable under Sections 8(c), 20 (b) (ii) (b) r/w 22 (a) of NDPS Act @ 8 (c), 20 (b) (ii) (b) r/w 22 (a) 22 (c) of NDPS Act, in Crime No.155 of 2022 on the file of the respondent Police, seeks bail.

3.The petitioner in CrI.O.P.No.11558 of 2022, who was arrested and remanded to judicial custody on 06.03.2022 at the hands of the respondent police for the offences punishable under Sections 8(c) r/w 20 (b) (ii) (B), 22 (a), 22 (C) of NDPS Act, 1985 in Crime No.155 of 2022, on the file of the respondent Police, seeks bail.

4. The case of the prosecution is that the petitioners were found in illegal possession of banned Ganja and 65 grams of Methamphetamine. Hence the complaint.

5. The learned counsel for the petitioner would submit that the second accused was taken into custody by the respondent police as early as 04.03.2022 and he was shown as arrested on 09.03.2022. Therefore, the respondent foisted a false case as against the petitioner and remanded to judicial custody. He further submitted that as far as A5 is concerned he was taken into judicial custody by the respondent police as early as 07.03.2022 and thereafter, he was shown as arrested on 09.03.2022 in the present case. He further submitted that the respondent failed to comply the provisions as contemplated under Section 50 of NDPS Act. The date of seizure and arrest is un-trust worthy and doubtful for the reasons submitted that their arrest were shown only on 09.03.2022, whereas, they were taken to illegal custody as early as on 04.03.2022 and on 07.03.2022. Therefore, the exemption as contemplated under Section 37 (B) of NDPS Act, is satisfied and there are reasonable grounds for believing that petitioners are not guilty of the offence as alleged by the prosecution. He further submitted that in fact, they filed petition under Section 91 of Cr.P.C. to produce the CCTV footages in CrI.M.P.No.3550 of 2022 and the same was allowed by the learned XV Metropolitan Magistrate, George Town, Chennai. However, later the respondent said that the particular date of CCTV footages was not available. It shows that the respondent had taken the petitioners into illegal custody and foisted the present case. He would further submit that the petitioner in CrI.O.P.No.11558 of 2022 is arrayed as A1. The petitioner's father was working as Sub Inspector of Police and the petitioner is an alcoholic addict and as such he was produced by his



own father and the present case has been foisted as against the petitioner. The petitioner/A1 was also in possession of 2Kgs of Ganja and 5 grams of Methamphetamine. He further submitted that he is an user and he used to purchase from other accused persons. When the petitioner was standing in the V.O.C. Nagar railway station for train, the petitioner/A1 was arrested by the respondent police.

6. The learned Additional Public Prosecutor filed counter and stated that there are totally 7 accused in which the petitioners are arrayed as A1, A2 and A5. On 06.03.2022, when the Sub Inspector of Police was in duty and had got secret information about illegal sale of Ganja. Thereafter, the police team went to the scene of occurrence namely the railway station VOC Nagar, New Washermenpet and the A1 was in illegal sale of Ganja and the respondent conducted a check up with him and found that he was in possession of 2 Kgs of Ganja and 5 grams of Methamphetamine. On his confession the A2 and A5 were arrested and they were in possession of 80grams of Methamphetamine and 60 grams of Methamphetamine and they were arrested and remanded to judicial custody on 09.03.2022. Likewise the respondent also arrested the A6 and A7 and they were in possession of various quantum of Methamphetamine and all are commercial quantity. In fact, they followed all procedures as contemplated under the NDPS Act and secured the petitioners to judicial custody. The learned counsel for the petitioners had taken stand that the petitioners were illegally detained and only thereafter, their arrest were shown in the present case. That apart, the respondent failed to follow the procedure as contemplated under Section 50 of NDPS Act. Though the application filed by the petitioner under Section 91 Cr.P.C. was allowed and directed to produce the CCTV footages from 06.03.2022 to 08.03.2022 and the same is not the ground for granting bail, when there is specific bar under Section 37 of NDPS Act. The total contraband involved in this case is 760grams of Methamphetamine and 2Kgs of Ganja, which is a commercial quantity. Therefore, the twin conditions as contemplated under Section 37 of NDPS Act namely, prima-facie satisfaction to be recorded regarding availability of ground for believing that the accused are not guilty and the accused are not likely to commit any offence while on bail are required to be fulfilled simultaneously for grant of bail. Hence, he vehemently opposed to grant bail to the petitioner.

7. In this case, the twin conditions as contemplated under Section 37 of the NDPS Act are not satisfied before this Court. That apart, the ground of non compliance of Section 50 of the NDPS Act has to be considered only during the trial and not at the bail stage. That apart, all the accused persons were jointly in conscious possession of contraband. Therefore, A1 alone cannot be split into as if he was in possession of 2 grams of Ganja and 5 grams of Methamphetamine namely, below the commercial quantity. Therefore, this Court is not inclined to grant bail to the petitioners.



8. Accordingly, these Criminal Original Petitions are dismissed.

-sd/-
13/06/2022

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 INSPECTOR OF POLICE
H5-NEW WASHERMENPET POLICE STATION,
CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

+1 CC to M/S.C.BALAJI Advocate on payment of necessary charges
SR.NO.8918

CRL OPs.11516, 11539 & 11558 of 2022

Date :13/06/2022

JPA 24/06/2022