



IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Monday, the Twentieth day of June Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice G.K. ILANTHIRAIYAN

CRIMINAL ORIGINAL PETITION No.11643 of 2022

IN C.C.NO.204 of 2021

(ON THE FILE OF THE II ADDITIONAL NDPS SPECIAL COURT UNDER  
NDPS ACT, CHENNAI)

RAJA MOHAMED

[ PETITIONER / ACCUSED ]

Vs

THE STATE REP BY

[ RESPONDENT ]

THE ASSISTANT COMMISSIONER OF POLICE,  
WASHERMENPET RANGE,  
CHENNAI.

CRIME NO.87/2021.

For Petitioner : M/S.F.WELLINGTON Advocate

For Respondent : M/S.A.DAMODARAN, Additional Public Prosecutor

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who was arrested and remanded to judicial custody on 05.03.2021 for the offences punishable under Sections 8(c), 20(b) (ii)(C), 25 and 29(1) of NDPS Act in CC.No.204 of 2021 on the file of the II Additional NDPS Special Court under NDPS Act, Chennai in respect of crime No.87 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 04.03.2021 at 16.30 hrs, the respondent police received a call from the informer that some well known persons of him, who are regularly selling 'ganja' between 5.00 p.m. and 06.00 p.m. near IOC Railway Gate are going to come that day also to sell 'ganja' and based on the information, the respondent



police went to that place and had seen three persons were setting in an auto rickshaw bearing registration No.TN 05 BD 7510 along with a white gunny bag weighing 25 kg of 'ganja' and in another auto rickshaw bearing registration No.TN 05 WB 2264 two more persons were sitting in along with a white gunny bag weighing 26 kg of 'ganja' and in a two wheeler bearing registration No.TN 03 AC 0058 two more persons were sitting on along with a white gunny bag weighing 25 kg of 'ganja' and the respondent police seized the contraband and arrested them and registered the case under Sections 8(c), r/w 20(b)(ii)(C), r/w 25 and r/w 29(1) of NDPS Act on 05.03.2021 at 01.30 hrs in crime No.87 of 2021 and the petitioner is arrayed as A1.

3. The learned counsel for the petitioner would submit that there are totally eight accused, in which the petitioner is arrayed as A1. After completion of investigation, the respondent filed final report and the same has been taken cognizance in CC.No.204 of 2021 before the trial court. The prosecution has already examined PW1 who is the seizure officer of the contraband. The seizure mahazars of A1 and A2 have not been marked as exhibits by PW1. As per the testimony of the PW1, he weighed the alleged seized 'ganja' from the petitioner and took samples and marked the samples as S1 and S2 and marked the remaining contraband as P1. Thereafter, he prepared the seizure mahazar and seized the vehicle. Insofar as A2 is concerned, he seized the alleged contraband and took samples and marked the samples as S3 and S4. The remaining contraband was marked as Ex.P2. Therefore, Section 50 of NDPS Act was not properly complied by the prosecution. In fact, PW1 also deposed in his chief examination that he along with eight other police persons went for raid including Sub Inspector one, Gangadharan and Head Constable Venkatesan, Gr-I Police Constable Manikandan. Whereas, three police persons were engaged in another case in crime No.86 of 2021. It was marked as Ex.D1. Therefore, there is a fair chance for acquittal and prayed for bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent police would submit that there are totally eight accused, in which the petitioner is arrayed as A1. Totally, 76 kg of 'ganja' was recovered from the accused, wherein from this petitioner, 25 kg of ganja was recovered. Further, two auto and 2 two-wheelers which were involved in the offence were seized by the respondent police. He would further submit that whether the accused was in conscious possession of the drugs cannot be decided only during evidence let in during trial and it cannot be presumed at this stage of bail. Hence, he vehemently opposed to grant bail to the petitioner.

5. It is seen that huge quantity of drug was recovered from the accused persons. Mere some of the police personnel were engaged in other duty, it does not mean that the police personnel were not there while conducting raid. That apart, the conscious possession of the drugs cannot be decided only during the evidence let in during the trial and it cannot be presumed at the stage of bail. Further, it is



not the case, where the prosecution case rests only on the confession statements recorded under Section 67 of NDPS Act, whereas it is the case where huge commercial quantity of the drugs was recovered from the petitioner and others and there are also other materials on record to prima facie fix the accused. Therefore, the petitioner failed to satisfy this Court as contemplated under Section 37 of NDPS Act and this Court is not inclined to grant bail to the petitioner.

6. Accordingly, this criminal original petition is dismissed.

-sd/-

20/06/2022

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 II ADDITIONAL NDPS SPECIAL  
COURT UNDER NDPS ACT, CHENNAI.

2 THE ASSISTANT COMMISSIONER OF POLICE,  
WASHERMENPET RANGE,  
CHENNAI.

3 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

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

CC to M/S.F.WELLINGTON Advocate on payment of necessary charges

CRL OP.11643/2022

Date :20/06/2022

RW-24/06/2022