



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

CORAM:

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.13365 of 2022

Ganesan

.. Petitioner

Vs.

State rep.by
The Inspector of Police,
NIB CID,
Chennai.
(Crime No.36 of 2021)

.. Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Crime No.36 of 2021 on the file of the respondent police.

For Petitioner : Mr.T.S.Sasikumar

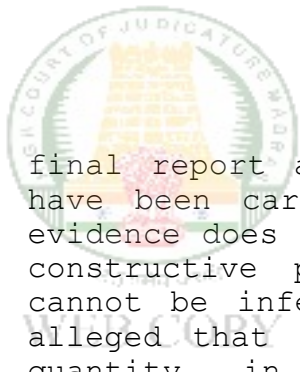
For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

ORDER

The petitioner herein is arrayed as second accused in a case for alleged possession of 21 Kgs of Ganja along with first accused by name Maharaja.

2. According to the prosecution, the petitioner along with A1-Maharaja alighted Dhanbad Allepy Express on 11.10.2021 at about 23.15 hours at Plat Form No.6. On suspicion, they enquired them and found 21 Kgs of GanJa in a bag held by them. Hence, they were arrested and case under Sections 8(c) r/w 20(b)(ii)(c), 29(1) of NDPS Act was registered and final report was also filed which is taken on file in C.C.No.60 of 2022.

3. The petitioner herein seeks bail on the ground that the prosecution has not mentioned from whose possession the contraband was seized and there is vagueness in the complaint as well as the



final report about the description of the bag which is alleged to have been carried by the accused persons. While the prosecution evidence does not speak about the person who held the contraband, the constructive possession of the contraband with both the accused cannot be inferred. In the light of the said fact, though it is alleged that the contraband seized is 21 Kgs which is commercial quantity, in the absence of material evidence that the said contraband was in possession of the petitioner, the rigor of Section 37(2) of NDPS Act will not apply to the petitioner herein.

4. The above submission made by the learned counsel for the petitioner appears to be correct in the light of the material evidence collected by the investigating office and placed before this Court along with the final report. No doubt, Section 54 of NDPS Act provides for presumption and Section 35 of NDPS Act provides for presumption of culpable mental state. But on considering the material facts placed along with the final report, this Court find that the prosecution has not placed any material to indicate the possession with any of the two accused specifically. Therefore, for the said reason recorded, this Court is inclined to grant bail to the petitioner, with certain conditions. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions;

(a) the petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties, each for a like sum to the satisfaction of the learned I Additional 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 petitioner is directed to report before the Investigating Officer daily 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.

-sd/-
01/07/2022

WEB COPY

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 I ADDITIONAL SPECIAL JUDGE,
NDPS ACT, CHENNAI

2 THE INSPECTOR OF POLICE,
NIB CID CHENNAI

3 THE SUPERINTENDENT OF PRISON
CENTRAL PRISON, PUZHAL, CHENNAI

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M/S.T.S.SASIKUMAR Advocate on payment of necessary charges SR.NO.10477

CRL OP.13365/2022

Date :01/07/2022

JPA 01/07/2022