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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.11918 of 2022

Hari Hara Bagh

...Petitioner

Vs.

State, Rep. by
Inspector of Police,
NIB, CID, Kancheepuram,
Kancheepuram District.
Cr. No.3 of 2022

...Respondent

PRAYER:-Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge him on bail in connection with the Crime No.3 of 2022 pending investigation on the file of the Inspector of Police, NIB, CID, Kancheepuram

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 21.01.2022 for the offence under Sections 8(c), 20(b)(ii) (c), 29(1) of the NDPS Act in crime No.3 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that totally there are three accused, in which, the petitioner is arrayed as A3. It is alleged that A1 and A2 had jointly were in possession of 10 and 12 kgs of Ganja in two bags and the specific allegation against the petitioner herein is that, the petitioner had given money to the co-accused to purchase the contraband from Odisha. Hence, the case was registered against the petitioner.



3. The learned counsel appearing for the petitioner contended that, though the petitioner herein also hails from Odisha, it cannot be constituted that he also travelled along with A1 and A2. That apart, the petitioner was arrested and remanded to judicial custody on 21.01.2022. Hence, he prays for grant of bail to the petitioner.

4. The learned Additional Public Prosecutor filed a counter and would submit that all the accused A1 to A3 were in conscious possession of the contraband (22kg in 2 bags) and that the petitioner is an employer and A1 and A2 were employees. Naturally, the petitioner directed A1 and A2 to carry the contraband. He also produced the confession statement given by the co-accused. He would also submit that the alleged quantity is a commercial quantity and A1 to A3 were in conscious possession of the said contraband. Now, respondent also completed investigation and filed final report and yet to take cognizance by the trial Court. Therefore, he pray for direction to the trial Court to complete the trial within the stipulated time.

5. Admittedly, the petitioner was not in possession of the contraband. That apart, the confession statement recorded from the co-accused cannot be considered during the bail and it can be considered only during the trial. Therefore, the confession statement recorded under Section 67 of NDPS Act cannot be used at the stage of bail. A1 and A2 were in possession of the contraband in 2 bags. Except the fact that the petitioner also belongs to Odisha, there is no material to connect A1 and A2 with the petitioner. While considering the bail application, the prosecution failed to produce any material to connect A1 & A2 and the petition herein. Even assuming that, the petitioner is the employer of A1 and A2 and had paid money for purchasing contraband, the prosecution failed to produce any evidence to show that the petitioner herein financed for purchase of the contraband.

6. Therefore, the petitioner have made out a prima-facie case to fulfill the conditions as contemplated under Section 37 of NDPS Act and as such considering the facts and circumstances of the case and also considering the period of incarceration suffered by the petitioner ie., from 21.01.2022, this Court is inclined to grant bail to the petitioner.

7. Accordingly, petitioner is ordered to be released on bail on his executing a 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 learned Judicial Magistrate -1, Thiruvallur 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.

WEB COPY [b] the petitioner shall report before the respondent police thrice daily at 10.30 a.m., 1.00 p.m and 5.30 p.m., until further orders.

[c] the petitioner shall not abscond either during investigation or trial.

[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 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/-

29/06/2022

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 JUDICIAL MAGISTRATE-I,
THIRUVALUR.

2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALUR [FOR INFORMATION]

3 THE INSPECTOR OF POLICE,
NIB, CID, KANCHEEPURAM,
KANCHEEPURAM DISTRICT.

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



5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1CC to M/S.R.SANKARASUBBU
charges SR.No.10305

Advocate on payment of necessary

CRL OP.11918/2022

Date :29/06/2022

CSK 30/06/2022