



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Thirtieth day of June Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice G.K. ILANTHIRAIYAN

CRIMINAL ORIGINAL PETITION No.15137 of 2022

IN

C.C.NO.01/2021

(Pending on the file of the Hon'ble Principal Judge for NDPS and
EC Act Cases, Chennai)

J.JOSHUA ANTONY DARIUS

[PETITIONER / ACCUSED]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
NIB CID, CHENNAI.
(CR.NO.19 OF 2020)

[RESPONDENT]

For Petitioner : M/S.G.PRABHAKARAN Advocate

For Respondent : MR.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 18.07.2020 at the hands of the respondent police for the alleged offences punishable under Sections 8(c), 20(b)(ii)(c), 25 and 29(1) of NDPS Act, in Crime No.19 of 2020, seeks bail.

2. The case of the prosecution is that the petitioner and other accused were found in possession of 105 Kgs of Ganja. Hence, the complaint.

3. The learned counsel for the petitioner submitted that there are totally five accused in which the petitioner is arrayed as A2. The petitioner was arrested and remanded to judicial custody on 18.07.2020. Even till today, the prosecution failed to produce any witnesses except P.W.1. In fact, P.W.1 was not present in the Trial



Court on several occasions and the Trial Court warned P.W.1. Only thereafter, P.W.1 was present for cross examination. Thereafter, on 16.05.2022, the Trial Court categorically recorded and fixed the date for L.W.2 to L.W.5. Even then, L.W.2 to L.W.5 were not present for trial. Therefore, without completing the trial the petitioner is in incarceration for the past two years. He further submitted that there are complete contradiction by P.W.1 in respect of seizure, sending samples for analysis and Ex.D1 to Ex.D3. He further submitted that the samples which were taken from the contraband were marked as S1, S3, S5, S7 and were not available before the Trial Court. When the samples which were taken from the contraband are not available, then the entire case of the prosecution fails and it is a case of acquittal. In fact, during the cross examination, he categorically admitted that there are totally 4 bags recovered from the accused persons, in which 3 bags recovered from A1 to A3 and other bags were recovered from other accused persons. He was not at all present in the place of occurrence. Therefore, there are contradictions and there are grounds for acquittal and as such the petitioner cannot be put into prison that too for about two years. Hence, he prays to grant bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that all the points raised by the petitioner can be considered during the Trial and not in bail petition. Whatever the contradiction in the deposition of P.W.1, that can be considered only by the trial Court during the trial. Hence he vehemently opposed to grant bail to the petitioner.

5. There are five accused in which the petitioner is arrayed as A2. A1 to A3 were in conscious possession of 74 kgs of Ganja and it is a commercial quantity. Totally 105 Kgs of Ganja were recovered from all the accused persons. Due to Covid 19 pandemic circumstances, P.W.1 was not present for cross examination and now all the witnesses were summoned. L.W.2 to L.W.5 will be examined on 05.07.2022 onwards. It is seen that there are five accused in which the petitioner is arrayed as A2. A1 and A3 were in joint possession of 75 Kgs of Ganja. Though, the learned counsel for the petitioner pointed out so many contradictions of P.W.1, it cannot be considered in the bail petition and it can be considered only during the trial by the Trial Court. That apart, due to Covid 19, the entire trial has been stalled and now only the trial has begun and the matter is posted for examination of further witnesses on 05.07.2022.

6. Considering the facts and circumstances of the case, this Court is not inclined to grant bail to the petitioner. However, the Trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.



7. Accordingly, this Criminal Original Petition is dismissed.

-sd/-

30/06/2022

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 JUDGE FOR NDPS
AND EC ACT CASES, CHENNAI.

2 THE INSPECTOR OF POLICE,
NIB CID, CHENNAI.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1CC to M/S.G.PRABHAKARAN Advocate on payment of necessary
charges SR.No.10551

CRL OP.15137/2022

Date :30/06/2022

CSK 06/07/2022