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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No. 16770 of 2022

P.Kiran Kumar

... Petitioner/Accused-4

Vs.

State by,
The Intelligence Officer
Narcotic Control Bureau
Chennai Zonal Unit
Chennai – 600 077.

R.R.No. 4 of 2019

(NCB F.No. 48/1/4/2019-NCB/MDS 929 ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioner on bail in C.C.No. 146 of 2019 on the file of the Principal Sessions Judge, EC and NDPS Act, Chennai, in R.R.No. 4 of 2019 in NCB F.No. 48/1/4/2019-NCB/MDS 929 on the file of the respondent.

For Petitioner : Mr.K.Sivakumar

For Respondent : Mr. N.P.Kumar

Special Public Prosecutor for NCB



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ORDER

The fourth accused in C.C.No. 146 of 2019 now pending on the file of Principal Sessions Court / EC and NDPS Act, Chennai, has approached this Court seeking bail.

2. He had been arrested on 13.07.2019 for alleged offences under Section 8(c) read with Section 20(B)(ii)(c), 27(A), 28 and 29 of the NDPS Act 1985 and had been remanded to judicial custody on the same day.

3. Mr.K.Sivakumar, learned counsel for the petitioner had pointed out that the petitioner has been incarcerated for more than 1200 days as on this date. This is not the first bail application. Earlier bail applications suffered adverse orders. But however, in one of the orders, a direction was issued that the trial should be completed within a specified period of time. It is stated by the learned counsel that the trial had meandered around at snails pace.



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4. Mr. N.P. Kumar, learned Special Public Prosecutor on the other hand had stated that so far as the prosecution is concerned, all the witnesses have been examined and questioning under Section 313 of Cr.P.C., has also been done by the learned Sessions Judge and when the matter was posted for examination of defence witness, some of the other accused by changing their counsel had filed an application for recall of some of the prosecution witness for further cross examination. This filing applications had defeated the direction issued and trial could not be completed within the stipulated time. But it is a fact that the trial is at the last stages of completion.

5. The learned counsel Mr.K.Sivakumar however pointed out that the evidence recorded does not disclose any cognizable offence as having been directly committed by the petitioner herein and therefore urged that this Court could give due credence to the cross examination of the Investigating Officer.

6. It is the stand of Mr. N.P. Kumar, learned Special Public Prosecutor for NCB that there had been transactions between the



petitioner herein and the first accused and the other accused and this fact had been brought out during the chief examination of the Investigating Officer.

7. But Mr. K.Sivakumar, learned counsel for placed reliance on the cross examination of the very same witness / Investigating Officer, who admitted that he had not examined Vandara Krishna, who admittedly supplied drugs and the transactions relating to him had not been examined or investigated by the Investigating Officer.

8. It is also pointed out by Mr.K.Sivakumar that there had been transactions between the petitioner and the first accused during the period 2017 and 2019 and it is justified on the ground that the petitioner was running a hotel business and the first accused was an event manager and it was therefore natural that there were a money transactions between the two of them. They was also an occasion when the first accused had lent money to the petitioner and the petitioner was under compulsion to return back the money and there transactions have been taken advantage of the prosecution to be disadvantage of the petitioner herein.



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9. The learned counsel also relied on two orders granting bail to A-4 and A5 in C.C.Nos. 32 and 33 of 2021 wherein two learned Single Judge of this Court while examining the bail applications, had passed orders, one on 30.09.2022 in CrI.O.P.No. 23844 of 2022 and the other on 14.10.2022 in CrI.O.P.No. 21638 of 2022 and had favourably considered the reliefs sought.

10. These two orders are relied on strongly by Mr.K.Sivakumar, learned counsel to point out that even when trial is in progress, the Court can examine the evidence and can grant the bail. It was pointed out that the learned Single Judges had imposed security deposits by the said accused to show their bona fide in attending further hearings in the trial and not absconding.

11. Further reliance was also placed on the Judgment of a learned Single Judge of Delhi High Court in ***Bail Application No. 1189 of 2020 [Amit Ranjan Vs. Narcotics Control Bureau]***, wherein, by order dated 23.05.2022, the learned Single Judge had examined in



extreme detail the prosecution case and the possibility of conviction and in the teeth of Section 37 of the NDPS Act had thought it was a fit case to grant bail and had granted bail.

12. Though the learned counsel had pointed out relevant portions from the cross examination of the Investigating Officer, I am not extracting such portion in the course of this order.

13. It is the case of Mr.N.P.Kumar, learned Special Public Prosecutor that the prosecution could not be blamed for the delay in conclusion of trial in C.C.No. 146 of 2019 and the learned Special Public Prosecutor specifically stated that the prosecution had completed examining their witnesses and it was the accused, who, taking turns, were filing applications and protracting the Judgment from being delivered by the learned Sessions Judge.

14. I have carefully considered the rival arguments put forth.



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15. I had placed even in my oral observations to the learned counsels, that this Court should be extremely careful particularly since the evidence of the prosecution had been adduced in entirety, in giving any opinion on the nature of evidence adduced, since it would definitely play upon the mind of the learned Sessions Judge. Even though it is often observed that opinions expressed in orders in bail applications or in any other applications, should not be considered by the learned Trial Judge, still as a fact, such observations are only perfunctory in nature and the opinions expressed actually play upon the mind of any trial Judge. It is for that reason, I am not extracting the portions read out by Mr.K.Sivakumar, learned counsel for the petitioner herein.

16. The two orders of the learned Single Judges of this Court relate to seizure of Ganja and though it was of commercial quantity, the state prosecution had conducted trial in a very lethargic manner and taking into consideration those factors, both the learned Single Judges were of the opinion that necessary security may be imposed to be deposited on the said accused and bail was granted.



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17. As a matter of fact in one of the orders, the learned Single Judge had opined that the twin conditions of Section 37 of the NDPS Act had been satisfied. But in the instant case, let me a little more cautions.

18. The learned counsel for the petitioner had presented the points which according to him are admissions in favour of the petitioner herein and admissions particularly by the Investigating Officer. These aspects are to be examined only by the trial Judge and I am extremely confident that the learned trial Judge would examine all those issues in the proper perspective.

19. It is a fact that the petitioner has been incarcerated for the past 1200 days. I would therefore direct the learned trial Judge to dispose of C.C.No. 146 of 2019 on or before 30.11.2022. No further time should be sought and the learned trial Judge may conduct the trial on a day today basis. This order is binding not only on the petitioner herein but also on the prosecution and also on all the other accused.



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20. As the order is passed directing disposal of the calendar case in C.C.No. 146 of 2019 in entirety, the points urged by Mr.K.Sivakumar to repeat, which I am confident would be viewed in their proper perspective by the learned Sessions Judge while delivering Judgment in the said Calendar Case are not stated by me.

21. With the above said observations, this Criminal Original Petition is dismissed.

27.10.2022

Index :Yes/No

Internet :Yes/No

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To

1. Principal Sessions Court, EC and NDPS Act, Chennai.
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C.V.KARTHIKEYAN, J.



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