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Crl.O.P.No.17110 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2022

CORAM:

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.17110 of 2022

Jafarkhan

.. Petitioner

Vs.

Inspector of Police,
NIB CID,
Kanchipuram.
(Crime No.17/2021)

.. Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in C.C.No.186 of 2021 on the file of the Principal Special Judge, NDPS Act, Chennai in Crime No.17 of 2021 pending on the file of the Inspector of Police, NIB, Kanchipuram District.

For Petitioner : Mr.T.S.Sasi Kumar

For Respondent : Mr.N.S.Suganthan
Government Advocate (Crl.Side)



ORDER

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The petitioner herein was arrested on 18.06.2021 for the alleged possession of 24 Kgs of Ganja for the offences under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act in Crime No.17/2021.

2. The case of the prosecution is that the petitioner was carrying a white colour plastic bag and a black blue colour shoulder bag. From it, 24 Kgs of Ganja (six packets each containing 4 Kgs) was seized. According to the prosecution, 4 packets were kept in a white colour polythene bag and two packets were kept in blue black rexine shoulder bag. Contending that the samples were not drawn from each packet and thereby, the procedure laid down by the Notification, 1/1989 issued by NCB is grossly violated. Hence, the bail was sought.

3. This Court, dismissed the bail petition after considering the notification referred and the judgments of the Hon'ble Supreme Court held that only after examination of witnesses, particularly the officer who seized



the contraband, Court can come to the conclusion whether there was any error in making homogeneous lot of all the 6 packets of Ganga, before drawing samples.

4. After examination of P.W.1, the seizing officer, the present bail petition is moved. Alleging that, it is elicited during the cross examination of P.W.1 that he has not made a homogeneous lot of identical packets but only based on his experience from the odour of the packets, he has inferred that all the packets contains Ganja. It is also elicited from the seizing officer that the contraband was not tested in the field at the time of seizure, using test kit. Thus, homogeneous violation of the guidelines regarding drawing of sample, trial sought.

5. Learned Government Advocate (Crl.Side) submitted that the contraband seized is above commercial quantity and all the six packets were sealed with brown colour tape identically and weighted 4 Kgs each. Therefore, making homogeneous lot of the 6 packets and sample drawn from it, is not in violation of the guidelines under the Notification 1/1989.



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5(i). Further, the learned Government Advocate would submit that the petitioner hails from New Delhi and the trial is half way. If the petitioner is released on bail, it may be impossible for the prosecution to secure him and complete the trial, since there is possibility of abscondance.

6. The Standing Order No.1/1989, states that if there is multiple packets, normally, it is advisable to draw one sample (in duplicate) from one each package / container. Para 2.5 of the said standing order states that if the containers/packages are of identical in size and weight, wherein identical markings, then the content may be bunched in lots of 40 in case of Ganja. As far as the evidence of P.W.1 and the Mahazar indicates that the 6 packets were sealed with brown colour tape identically and each weighing 4 kgs. Hence, he made a homogeneous lot of the 6 packets.

7. In the light of the above facts and taking into consideration of the objection of the learned Government Advocate, this Court is of the view that the petitioner may be granted bail on condition to report before the Court concerned daily.



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8. Therefore, 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 Principal Special Judge, NDPS Act, Chennai. Atleast one of the two sureties shall hail from 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 Court concern daily until further orders; He shall not leave Chennai without permission of the trial Court.

(d) the petitioner shall not tamper with evidence or witness either during investigation or trial;



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(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.

25.07.2022

AT

To

- 1.The Principal Special Judge, NDPS Act, Chennai.
- 2.The Inspector of Police,
NIB CID,
Kanchipuram.
- 3.The Superintendent of Prison,
Central Prison, Puzhal-II, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

AT

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