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CrI.O.P.Nos.18778 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2022

CORAM

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

CrI.O.P.No.18778 of 2022

Kathiravan @ Thambis

...Petitioner

Vs.

State Rep. by:
The Inspector of Police,
Senkundram M-4 Police Station,
Chennai - 600 052.

..Respondent

PRAYER:

Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail pending trial of the case in C.C.No.41 of 2022 pending on the file of the I Additional Special Court for NDPS Cases Chennai.

For Petitioner :Mr.V.K.Sathiamurthy

For Respondent :Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

The petitioner, was arrested and remanded to judicial custody on 23.07.2021 for the offences punishable under Sections 8(c) read with Section 20(b)(ii) (C), 25 and 29(1) of NDPS Act in crime No.1402 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that, based on the secret information received, the respondent police intercepted TN 67 AW 4950 TATA India Car from Ponneri to Redhills. However, the driver of the vehicle without stopping, drove the vehicle in a rash manner. Thereafter, the respondent police had intercepted the vehicle and enquired the driver one Sathish Kumar and one Pandiyan and on search, they were found in possession of 120 kgs of Ganja. Therefore, they were arrested and remanded to judicial custody.

3. The learned counsel for the petitioner submitted that totally there are seven accused and the petitioner is arrayed as A3. Admittedly, the petitioner is the relative of A2 and except the said relationship, the petitioner had no specific allegations as alleged by the prosecution. Since,



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the petitioner has been implication only on the confession statement of the arrested accused. Even according to the case of the prosecution, there is no recovery has been made from the petitioner and except the confession statement, there is no other material to indicate the petitioner in the present case. Though, the prosecution produced phone calls between A2 and A3, those informations are not available in the charge sheet to link the petitioner in the present case. As per the confession statement recorded from the arrested accused reveals about various peoples involved jointly in the said offence and thereafter, the seized materials which were produced before the Magistrate on the same day which was returned to the respondent police for producing the same before the Special Court. However, the contraband were produced before the Concerned Jurisdiction Court only on 18.08.2021 inspite of the direction issued by the learned Magistrate J.M II, Ponneri on 23.07.2021. Admittedly, there is no relevant record produced by the respondent police in respect of the safe and proper custody regarding the articles seized on 23.07.2021 and the production of the same before the Jurisdiction Court only on 18.08.2021 and therefore, there is a delay of 26 days in producing the seized contrabands before the Jurisdiction Court. The confession of the co-



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accused is a weak piece of evidence and there is no other material to connect the petitioner with the offence and the recovery made in this case. Now, the respondent completed investigation and filed final report and the same has been taken cognizance in C.C.No. 41 of 2022 and the petitioner was arrested and remanded to Judicial Custody on 23.09.2021 after a period of two months from the date of the alleged occurrence. Hence, he prayed for grant of bail to the petitioner.

4.Per contra, the learned Additional Public Prosecutor submitted that, though the petitioner has implicated as an accused only on the confession statement of the co-accused, there are other materials to connect the petitioner in this case. He further submitted that all the accused persons are in joint and conscious possession of the contraband weighing about 120 kgs of ganja which is a commercial quantity. Now, the respondent completed investigation and filed final report and it is pending for trial. He further submitted that the **Hon'ble Supreme Court of India** repeatedly held that though the confession statement of the co-accused is inadmissible in evidence, it cannot be used for granting bail, whereas it can be used only during the trial. In support of his contention, he also



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relied upon the judgment of the **Hon'ble Supreme Court of India** held in

CRIMINAL APPEAL NOS. 1001 -1002 OF 2022 as follows:

" 16. Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the appellant- NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench of this Court in *Tofan Singh (supra)*, wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. However, this was not the only material that the appellant- NCB had relied on to oppose the bail application filed by the respondent. The appellant- NCB had specifically stated that it was the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, *Promod Jaipuria* which resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and



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syrups. Counsel for the appellant-NCB had also pointed out that it was the respondent who had disclosed the address and location of the co-accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all co-accused including the respondent herein showed that they were in touch with each other.

17. Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.

18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the



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instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

6. Totally there are seven accused in this case and the petitioner is arrayed as A3 and he was implicated only on the confession statement of the co-accused.

7. On perusal of the confession statement of A6 revealed that, he only drove the car and A7 was sitting in the car. A1 and A4 escorted there car and therefore, there is no whisper about the petitioner's presence in the car. Except, the confession statement of A1 and A4, there is no other



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materials to connect the petitioner in this case. Admittedly, A3 is the relative of A2 and except that relationship, there is no other material to connect him in this case. The learned Additional Public Prosecutor produced the phone call details between A2 and A3, since, they were relatives, they might have spoken. Even assuming that they had spoken in respect of the purchase of the contraband, there is no other materials produced by the prosecution to connect the petitioner along with other accused persons. The **Hon'ble Supreme Court of India** held that the confession statement of the co-accused cannot be relied upon while considering the application for bail. It is further held that, the admissions made by the respondent while in custody to the effect that he had illegally traded narcotic drugs will have to be kept aside. However, this was not the only material that the respondent had relied on to oppose the bail application. The investigation had specifically stated that it was the disclosures made by the respondent that had led them to arrive to godown of the co-accused which has resulted in the recovery of a large haul of different psychotropic substances. Whereas, in the case on hand, there is no recovery from the petitioner and only on the strength of the confession statement, the petitioner has been implicated. Therefore, the judgement



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relied upon by the learned Additional Public Prosecutor is not helpful to the case on hand.

8. Now, the respondent completed investigation and filed final report and the only material available as against the petitioner is the confession statement of the co-accused and there is no other material is available to connect the petitioner in this case.

9. Considering the above facts and circumstances of the case and also considering the period of incarceration from the date of arrest, this Court is inclined to grant bail to the petitioner.

10. Accordingly, the 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 sureties**, each for a like sum to the satisfaction of the **learned I Additional Special Court for NDPS Cases, Chennai** and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb



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Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent police twice daily at 10.30.a.m., and 04.30 p.m. for a period of four weeks and thereafter as and when required for interrogation.

[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.

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To

1.I Additional Special Court for NDPS Cases,
Chennai.

2.The Inspector of Police,
Senkundram M-4 Police Station,
Chennai - 600 052.

3.Central Prison,
Puzhal.

4.The Public Prosecutor,
High Court of Madras

G.K.ILANTHIRAIYAN, J.



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