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CrI.OP.No.19836 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2022

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

CrI.OP.No.19836 of 2022

1.K.Karthikeyan

2.Ambedkumar @ Ambeth

...Petitioners

Vs.

The State Represented by its,
Inspector of Police,
M-5 Ennore Police Station,
Chennai.
(Crime No.907 of 2021).

...Respondent

PRAYER:

Criminal Original Petition is filed under Section 439 of Cr.P.C.
praying to enlarge the petitioners/2nd and 6th accused on bail in C.C.No.99
of 2022 pending trial on the file of the Hon'ble II Additional Special
Judge – NDPS Act, Chennai.

For petitioners : Mr.G.Prabhakaran

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

The 1st & 2nd petitioner, who were arrested and remanded to judicial custody on 25.10.2021 and 16.05.2022 respectively in the present case for the offences punishable under Sections 8(C), 20(b)(ii)(C) and 25 @ 8(C), 20(b)(ii)(C), 25 and 29(i) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.907 of 2021 on the file of the respondent police, seek bail.

2. The case of the prosecution is that on 24.10.2021, at about 10.15 hours, the *de-facto* complainant namely Tr.Devakumar, Sub Inspector of Police, attached to M5 Ennore Police Station, Chennai, received a secret information and entered the same in the general diary, then got permission from the Inspector of Police, the Sub Inspector of Police along with police party went to Ashipattu Bridge Kathivakkam Highway junction. On vehicle search they found a person carrying white colour fertilizer gunny bag in front of the vehicle bearing Reg. No.TN 05-BV-4947. The police party intercepted him and interrogated him and on enquiry he revealed his name as Karthikeyan/A2 and 22 Kgs of ganja



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was found in the gunny bag. The accused person had purchased ganja from Andhra and gave it to A1, A5 and A6/2nd petitioner herein for sale. Based on their confession, A3 and A4 were arrested on 24.10.2021 and on secret information, A1 was arrested on 24.10.2021 and 25 Kgs of ganja was seized from their house. Further, the respondent police arrested the accused and remanded them to judicial custody. Then they had taken 2 pockets of dry ganja weighing about 50 grams each and sent the same for chemical examination. Based on that, a case was registered in M-5 Ennore Police Station, Chennai in Crime No.907 of 2021 for the offences under Sections 8(c), 20(b),(ii),(C) and 25 of NDPS Act 1985 as against the accused persons (A1 to A6) on 24.10.2021 at about 13.30 hrs by the respondent police.

3. The learned counsel appearing for the petitioners would submit that the petitioners are arrayed as A2 & A6 in this Case. He would further submit that the respondent police suspected that the petitioners are members of the gang of one Dhanasekar and in order to curtail the activities of the said Dhanasekar, a false case has been registered by the respondent police under the NDPS Act. He would



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further submit that, the entire prosecution is filled with exaggerations and serious doubts and there are reasonable grounds to believe that the petitioners are not involved in the case and a false case has been foisted for other obvious reasons. He would further submit that, as per the prosecution, the case was stated to be registered on 24.10.2021 at about 1.30 p.m. by the Inspector and the serious doubt in the prosecution case is exposed by the fact that, as per the prosecution, A3 & A4 were arrested on the same day by the very same Inspector at Thiruverumboor, Trichy which is about 300 Kms away from Chennai at about 17.00 hrs (5.00 p.m.) which could not have been possible. Both the petitioners do not have any previous case registered against them under the NDPS Act. He further reiterated that none of the accused involved in this case have any previous case under the NDPS Act. He would further submit that, this Court taking into consideration the improbability of the arrest of the A4 by the investigating Officer owing to the distance of the place from which there was a recovery from A1, A2 and A3 has doubted the prosecution case and had granted bail to the co-accused in Crl.O.P.No.11965 of 2022 on 01.06.2022. When this Court had found that the prosecution case is improbable and doubtful and has granted bail



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to the co-accused, the petitioners are also entitled for bail on parity.

4. The respondent has filed his detailed counter and the relevant paragraphs are extracted here under:-

“ 7. *It is further submitted that the A2 involved in various cases is as follows:-*

PREVIOUS CASE DETAILS

<i>Sl. No.</i>	<i>Police Station & Crime Number</i>	<i>Section of Law</i>	<i>Stage</i>
<i>1.</i>	<i>Thirumangalam Town P.S., Cr.No.405/2019</i>	<i>U/s.25(1A), 27(2) – ARMS Act 3 IES Act 147, 148, 212, 294(b), 307, 324, 506(2)IPC</i>	<i>UI</i>
<i>2.</i>	<i>M4 Redhills P.S., Cr.No.406/2019</i>	<i>U/s.294(b), 323, 341, 392, 506(ii) IPC</i>	<i>UI</i>

8. *It is submitted that petitioner/accused A-6 is a habitual offender and also the history sheeted rowdy in H.S.No.74 of 2015 and the file of the Pullinthopu Police Station and apart from this case, he is A+ category offender also involved in various cases as follow:-*

PREVIOUS CASE DETAILS

<i>Sl. No.</i>	<i>Police Station & Crime Number</i>	<i>Section of Law</i>	<i>Stage</i>
<i>1.</i>	<i>Guduvanchery P.S., Cr.No.91/2015</i>	<i>U/s. 3, 5 IES Act, 302, 341, IPC @ 3, 5, 6, IES Act, 109, 120B, 147, 148, 148, 212, 302, 341 IPC</i>	<i>PT</i>



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Sl. No.	Police Station & Crime Number	Section of Law	Stage
2.	Periyamedu P.S., Cr.No.333/2009	U/s.341, 336, 397, 506(ii) IPC	PT
3.	Ennore P.S., Cr.No.1432/2015	U/s.147, 148, 307, 109, 387, 120(B), 149 IPC	PT
4.	Puliyanthoppu P.S., Cr.No.236/2022	U/s.341, 294(b), 323, 397, 427, 506(ii) IPC	UI
5.	Puliyanthoppu P.S., Cr.No.1450/2021	U/s.341, 294(b), 323, 392, 397, 506(ii) IPC	UI
6.	Puliyanthoppu P.S., Cr.No.1527/2020	U/s. 294(b), 392, 397, 506(ii) IPC	UI
7.	Puliyanthoppu P.S., Cr.No.141/2020	U/s.147, 148, 294(b), 323, 336, 341, 392, 397, 506(ii) IPC	UI
8.	Puliyanthoppu P.S., Cr.No.112/2020	U/s.294(b), 323, 336, 341, 392, 397, 506(ii) IPC	UI
9.	Puliyanthoppu P.S., Cr.No.429/2019	U/s.147, 148, 294(b), 323, 336, 341, 392, 506(ii) IPC	UI
10.	Puliyanthoppu P.S., Cr.No.425/2019	U/s. 147, 148, 294(b), 323, 336, 341, 392, 397, 506(ii) IPC	UI
11.	Puliyanthoppu P.S., Cr.No.499/2014	U/s.294(b), 336, 341, 392, 427, 506(ii) IPC	UI
12.	Thanjavur Medical College P.S., Cr.No.81/2016	U/s.25(1B)(b) Arms Act, 4(a), 5, 6, IES Act, 147, 148, 353 IPC	PT
13.	Minjur P.S., Cr.No.451/2018	U/s.109, 120B, 147, 148, 149, 201, 302, 307, 341,	PT



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Sl. No.	Police Station & Crime Number	Section of Law	Stage
		506(ii) IPC	
14.	Vengal P.S., Cr.No.37/2015	U/s.336, 341, 392, 397, 427, 506(ii) IPC	UI
15.	Vangal P.S., Cr.No.36/2015	U/s.147, 148, 294(b), 302, 307, 324, 506(ii) IPC (Transfer to CBCID Cr No.1/2015 u/s 147, 148, 449, 120(b), 302 r/w 149 IPC	PT
16.	Thiruvarambur P.S., Cr.No.225/2016	U/s.341, 212, 307, 147, 148, IPC 4(a), 4(b) IES Act 149, 109 IPC	UI
17.	Puliyanthoppu P.S., Cr.No.352/2018	U/s. 147, 148, 341, 294(b), 506(ii) IPC	UI
18.	Puliyanthoppu P.S., Cr.No.357/2018	U/s. 147, 148, 341, 294(b), 392, 397, 336, 506(2) IPC	UI
19.	Puliyanthoppu P.S., Cr.No.373/2018	U/s. 147, 148, 341, 294(b), 323, 392, 397, 336, 506(2) IPC	UI
20.	Otteri P.S., Cr.No.372/2018	U/s. 147, 148, 341, 294(b), 392, 397, 336, 506(2) IPC	UI

9. It is submitted that after the completion of elaborate and detailed investigation, on 04.03.2022 the then Inspector of Police have file charge sheet against the accused persons (A-1 to A-6) before the II Additional Special Judge, NDPS, Chennai vide C.C.No.99 of 2022, dated 04.03.2022. The next hearing was posted on 21.09.2022 for the appearance of accused.”



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5. The learned Additional public prosecutor appearing for the respondent would submit that on the specific information, the respondent police intercepted the car driven by the 1st petitioner and during the search 22 kgs of ganja was recovered from the 1st petitioner. Based on his confession, the case was registered. Subsequently, involvement of the other accused came to light and the respondent police has arrested the co-accused A3 & A4 at Thiruverumboor, Trichy on the same day at 5.00 p.m. He would further submit that there can be some typographical mistakes. He further submitted that, as far as the 1st petitioner is concerned, recovery of 22 kgs of ganja is made from him and as far as the 2nd petitioner is concerned, based on the confession of other accused he was arrested through PT warrant when he was confined in some other case. That apart, as far as the 1st petitioner is concerned, there are 2 previous cases and as far as the 2nd petitioner is concerned there are 20 previous cases. Hence, he vehemently opposed to grant bail to the petitioners.

6. Heard the learned counsels. It is the admitted case of the



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petitioners that they are the members of the gang of one Dhanasekar and in order to curtail further criminal activities of the petitioners and prevent them from coming out on bail a case under NDPS Act has been foisted on them with 22 Kgs of ganja, which is a "commercial quantity". It is also highlighted by the learned counsel for the petitioners that the case was registered at about 1.30 p.m. and the very same Inspector of Police who has registered the case at Chennai is stated to have arrested the co-accused in this case at Thiruverumboor, Trichy, on the same day at 5.00 p.m. Thereby, he had raised doubt on the prosecution case and also made this Court to believe that the intention of the respondent to implicate the petitioners in this case is only to curtail their criminal activities under the various provisions of Penal Code. Another Bench of this Court taking into consideration the doubts raised in the prosecution case has granted bail to the co-accused in Crl.O.P.No.11965 of 2022 dated 01.06.2022. Though there are serious allegations against the petitioners for having involved in previous cases, as far as the cases under the NDPS Act is concerned, this Court is of the opinion that the petitioners have *prima-facie* satisfied the conditions for granting bail under Section 37 of NDPS Act. Further, in this case investigation has been completed and final



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report has been filed and the case is also taken up for trial on 09.09.2022, on the file of the learned II Additional Special Judge, NDPS, Chennai. It is made clear that the observations made above are for deciding the bail application only and it will not have any bearing in the trial.

7. In view of the above, this Court is inclined to grant bail to the petitioners. Accordingly, the petitioners are ordered to be released on bail on their executing a separate bond for a sum of **Rs.25,000/- (Rupees Twenty Five thousand only)** with **two sureties**, each for a like sum to the satisfaction of the **learned II Additional Special Judge – NDPS Act, Chennai**, 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.

[b] the petitioners shall report before the learned II Additional Special Judge – NDPS Act, Chennai every day at 10.30 a.m., until further orders and shall report before the respondent police on every Saturday and Sunday at 5.30 p.m., until further orders.

[c] the petitioners shall not abscond either during investigation



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or trial.

[d] the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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 abscond, a fresh FIR can be registered under Section 229A IPC.

19.09.2022

mpl



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A.D.JAGADISH CHANDIRA, J.

mpl

To

- 1.The II Additional Special Judge – NDPS Act,
Chennai.
- 2The Inspector of Police,
M-5 Ennore Police Station,
Chennai.
- 3.Poonamallee Sub Jail.
- 4.Coimbatore Central Prison.
- 5.The Public Prosecutor,
High Court of Madras

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