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Crl.OP.No.19917 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2022

CORAM

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

Crl.OP.No.19917 of 2022

Raja Mohamed

..Petitioner

Vs.

State rep. by
The Assistant Commissioner of Police,
Washermanpet Range,
Chennai.

..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.204 of 2021 on the file of the II Additional Special Judge under NDPS Act, Chennai pending trial.

For Petitioner : Mr.C.Emalias

For Respondent : Mr.S.Santhosh

Government Advocate (Crl. Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody on 05.03.2021 for the offences punishable under Sections 8(c), 20(b)(ii)(C), 25 and 29(1) of NDPS Act in CC.No.204 of 2021 on the file of the II Additional NDPS Special Court under NDPS Act, Chennai in respect of crime No.87 of 2021 on the file of the respondent police, seeks bail.



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2. The case of the prosecution is that on 04.03.2021 at 16.30 hrs, the respondent police received a call from the informer that some well known persons of him, who are regularly selling 'ganja' between 5.00 p.m. and 06.00 p.m. near IOC Railway Gate are going to come that day also to sell 'ganja' and based on the information, the respondent police went to that place and had seen three persons were setting in an auto rickshaw bearing registration No.TN 05 BD 7510 along with a white gunny bag weighing 25 kg of 'ganja' and in another auto rickshaw bearing registration No.TN 05 WB 2264 two more persons were sitting in along with a white gunny bag weighing 26 kg of 'ganja' and in a two wheeler bearing registration No.TN 03 AC 0058 two more persons were sitting on along with a white gunny bag weighing 25 kg of 'ganja' and the respondent police seized the contraband and arrested them and registered the case under Sections 8(c), r/w 20(b)(ii)(C), r/w 25 and r/w 29(1) of NDPS Act on 05.03.2021 at 01.30 hrs in crime No.87 of 2021 and the petitioner is arrayed as A1.

3. The learned counsel for the petitioner would submit that there are totally eight accused, in which the petitioner is arrayed as A1. After completion of investigation, the respondent filed final report and the same has been taken cognizance in CC.No.204 of 2021 before the trial court. The prosecution has



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already examined PW1 who is the seizure officer of the contraband. The seizure mahazars of A1 and A2 have not been marked as exhibits by PW1. As per the testimony of the PW1, he weighed the alleged seized 'ganja' from the petitioner and took samples and marked the samples as S1 and S2 and marked the remaining contraband as P1. Thereafter, he prepared the seizure mahazar and seized the vehicle. Insofar as A2 is concerned, he seized the alleged contraband and took samples and marked the samples as S3 and S4. The remaining contraband was marked as Ex.P2. Therefore, Section 50 of NDPS Act was not properly complied by the prosecution. In fact, PW1 also deposed in his chief examination that he along with eight other police persons went for raid including Sub Inspector one, Gangadharan and Head Constable Venkatesan, Gr-I Police Constable Manikandan. Whereas, three police persons were engaged in another case in crime No.86 of 2021. It was marked as Ex.D1. Therefore, there is a fair chance for acquittal and prayed for bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent police would submit that there are totally eight accused, in which the petitioner is arrayed as A1. Totally, 76 kg of 'ganja' was recovered from the accused, wherein from this petitioner, 25 kg of ganja was recovered. Further, two auto and 2 two-wheelers which were involved in the offence were seized by



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the respondent police. He would further submit that whether the accused was in conscious possession of the drugs cannot be decided only during evidence let in during trial and it cannot be presumed at this stage of bail. Hence, he vehemently opposed to grant bail to the petitioner.

5. It is seen that huge quantity of drug was recovered from the accused persons. Though, this Court dismissed the bail petitions which were earlier filed by the petitioner, the learned counsel for the petitioner perused the evidence of P.W.1, who recovered the contraband from the accused. It is relevant to extract the portion of his deposition that according to him, he along with his police team after entered into the general diary about their inspection and they went to the place of occurrence at about 5.00 p.m. They also seized two autos and one two wheeler from seven persons and 25 Kgs of Ganja from one auto, 26 Kgs of Ganja from another auto and 25 Kgs of Ganja from the two wheeler. He further deposed that recording the confession statement of A1 to A3 mentioned in the 1st paragraph, the contraband which was seized from the petitioner and it was not found in the mahazar and as such, he marked only the auto bearing Registration No.TN 05 BD 7510 as Ex.P3.

6. Therefore, the petitioner made out a prima-facie case to satisfy the



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twin conditions as contemplated under Section 37 of NDPS Act. That apart, the co-accused was already released on bail by this Court in Crl.O.P.No.16081 of 2022 by an order dated 12.07.2022.

7. Considering the facts and circumstances of the case and also taking note of the fact that the petitioner has come forward to deposit an amount of Rs.50,000/-(Rupees Fifty Thousand only), by way of Demand Draft to the **Arignar Anna Memorial Cancer Hospital & Research Institute, Kancheepuram**, this Court is inclined to grant bail to the petitioner with certain conditions.

8. Accordingly, the petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) by way of Demand Draft to the **Arignar Anna Memorial Cancer Hospital & Research Institute, Kancheepuram** and on such deposit 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 related sureties**, each for a like sum to the satisfaction of the learned **II Additional Special Court under NDPS Act, 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 deposit a sum of Rs.50,000/-(Rupees Fifty Thousand only) by way of Demand Draft to the **Arignar Anna Memorial Cancer Hospital & Research Institute, Kancheepuram** and that the receipt of such payment shall be produced before the concerned Magistrate at the time of executing the bond;

[c] the petitioner shall report before the Trial Court daily Morning at 10.30 a.m., and Evening 05.00 p.m, until further orders.

[d] the petitioner shall not abscond either during investigation or trial.

[e] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[f] 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].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

20.09.2022

vsn/Lpp



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To

1.The II Additional Special Court, Chennai.

2.The Assistant Commissioner of Police,
Washermanpet Range,
Chennai.

3. Central Prison - II,
Puzhal.

4.The Public Prosecutor,
High Court of Madras.

G.K.ILANTHIRAIYAN, J.

vsn/Lpp



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