



Crl.OP.No.20750 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

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

Crl.OP.No.20750 of 2022

1.Hayath @ Hayathullah
2.Fathima

... Petitioners

Vs.

The State represented by
Assistant Commissioner of Police,
MKB Nagar Police Range,
Vyasarpadi,
Chennai - 600 039.
P-6 Kodungaiyur Police Station.
(Crime No.323 of 2021)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioners on bail pending trial in C.C.No.303 of 2021
in P6 Kodungaiyur Police Station Crime No.323 of 2021.

For Petitioner s : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.C.E.Pratap,
Government Advocate (crl.side)



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ORDER

The petitioners, who were arrested and remanded to judicial custody on 20.03.2021 for the offences punishable under Sections 8(c) r/w 22(c), 8(c) r/w 20(h)(ii)(B) of NDPS Act 1985 altered under Sections 22(c), 8(c),; 20(b)(i)(13) NDPS Act r/w 29(1) of NDPS Act 1985, in Crime No.323 of 2021 on the file of respondent police, seek bail.

2. The case of the prosecution is that the first petitioner was found in possession of 1 kg of Methamphetamine and 2 kgs of Ganja and the second petitioner was found in possession of 1 kg of Methamphetamine. Hence, the case.

3. The learned counsel for the petitioners would submit that the petitioners were arrested on 20.03.2021 and they are in custody for more than 1 ½ years. He would further submit that the investigation has been completed and a final report has been filed and the case has been taken on file in C.C.No.303 of 2021 on the file of the learned Principal Special Judge for NDPS Act. He would submit that as far as this case is concerned, there are several discrepancies in the prosecution case. As per the report recorded by the respondent under Section 57 of NDPS Act, the respondent police is said



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to have received information from the informer at 8.00 a.m., and the respondent police has given the intimation to the Assistant Commissioner at 08.15 a.m., and thereafter as per the prosecution, the respondent police had proceeded from the police station and reached the spot by 08.30 a.m., and he is said to have effected the arrest of the accused persons at 10.00 a.m., and brought them to the police station at 12.00 a.m and only thereafter they registered the FIR in Crime No.323 of 2021. However, strangely in the arrest memo, in respect of the accused, the crime number is found. Moreover, the arrest memo is a typed document creating a doubt with regard to the arrest of the accused and registration of the case. He would further submit that even as per the prosecution the accused were said to have been produced before the Court on the same day i.e on 20.03.2021 at 07.05 p.m., and the form 91 without the contraband was produced before the learned X Metropolitan Magistrate, Egmore on the same day. As per records the learned Magistrate has returned the form 91 directing the respondent to file the same along with the contraband on the next working day. Whereas, the respondent without complying with the order, has produced the same after a period of 3 months on 29.06.2021 before the Special Court under EC & NDPS, Chennai creating a grave doubt with regard to the seizure, registration of the case, the recovery



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of the contraband and production of the same before the Court. There is no explanation by the respondent with regard to the delay in producing the contraband before the Court, despite specific direction given by the learned X Metropolitan Magistrate to produce the contraband on the next working day. The non explanation with regard to the delay creates doubt in the prosecution case. Further in respect of the documents in the arrest memo and inspection memo, the petitioners were said to have been arrested at 8.00 a.m which goes totally against the case of the prosecution, when especially the information is said to have been received only at 8.00 a.m., on the same day. He would further submit that there is no previous case against the petitioners either in IPC or under NDPS Act. The petitioners have not committed any offence and they have satisfied the requirements of Section 37(ii) of the NDPS Act. He would also submit that since there is no Presiding Officer, the cases are being adjourned without any progress in trial. Hence, he seeks to enlarge the petitioners on bail.

4.The learned Government Advocate appearing for the respondent has filed a detailed counter, in which it is stated that based on a specific information, the petitioners were arrested and from the first petitioner an



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amount of 1 kg of Methamphetamine and 2 kgs of Ganja was recovered and from the second petitioner an amount of 1 kg of Methamphetamine was recovered. The learned Government Advocate (crl.side) further stated that the first petitioner was found to be in possession of 1 kg of Methamphetamine and 2 kgs of Ganja and the second petitioner was found to be in possession of 1 kg of Methamphetamine and the contrabands were kept in the Police Station and produced before the Court on 29.06.2021 and there is no discrepancy in the prosecution case. Hence, he vehemently opposed to grant bail to the petitioner.

5.This Court posted a specific question to the learned Government Advocate with regard to the delay in the production of the contraband before the Court and the place of storage of the contraband for three months. He would on instructions submit that since it was during Covid-19 period, the respondent was unable to produce the contraband before the Court within the time, resulting in, delay of three months and that the contraband was safely stored in the Police Station. He would further submit that there is no discrepancy in the prosecution case.



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6. Heard the learned counsel for the both sides and perused the materials placed on record.

7.Perusal of the records would show that there had been some discrepancies in the case which have to be explained by the prosecution. It is the case of the petitioners that the the contraband was not produced before the Court along with the accused on the date of remand and that despite the order passed by the Magistrate, they were produced before the Court after a delay of three months. There is no proper explanation from the respondent Police with regard to the delay in production of the contraband or with regard to the storage of contraband in the Police Station.

8.This Court is of the view that the petitioners have satisfied the conditions required under Section 37 of the NDPS Act for grant of bail. Further it is also submitted that there is no Presiding Officer and the trial is being delayed on account of the same. There is also no previous case as against the petitioners.



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9.In view of the above, the petitioners are ordered to be released on bail on executing 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 for NDPS & EC 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 trial Court on all working days at 10.30 a.m., until further orders;**

[c] the petitioners shall not abscond either during investigation 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



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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.

10.However, it is made clear that the aforesaid observations are only for the disposal of this bail application and they will not have a bearing on the case of the prosecution during the trial.

12.10.2022

gd/vkr

To

1. The II Additional Special Judge for NDPS & EC Act,
Chennai
2. The Assistant Commissioner of Police,
MKB Nagar Police Range,
Vyasarpadi,
Chennai - 600 039.
P-6 Kodungaiyur Police Station.
- 3.The Central Women Prison, Puzhal.
- 4.The Central Prison, Puzhal.
5. The Public Prosecutor, High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.

gd/vkr

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