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Crl.OP.No.21638 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2022

CORAM

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

Crl.OP.No.21638 of 2022

Kandikrishna

..Petitioner

Vs.

State Represented by
The Inspector of Police,
M4, Redhills Police Station,
Chennai.
(Cr.No.3789 of 2020)
..Respondent

PRAYER:Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail concerned in C.C.No.32 of 2021, pending trial on the file of the learned Principal NDPS Court, Chennai in Cr.No.3789 of 2020, M-4 Redhills Police Station, Chennai.

For Petitioner : Mr.Sathyamurthy
for M/s.S.Angamuthu
M/s.Shanthi

For Respondent : Mr.C.Pratap
Government Advocate (Crl.Side)



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 04.09.2020 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of the NDPS Act and 212 IPC in C.C.No.32 of 2021 on the file of the Principal Sessions NDPS Court at Chennai, in Crime No.3789 of 2020, seeks bail.

2. The case of the prosecution is that on 18.08.2020 at about 00.15 hours, the defacto complainant namely one Arunkumar, Sub Inspector of Police received a secret information and then got permission from the Inspector of Police. Thereby, the Sub Inspector of Police along with police party went to M.A Nagar Check Post, Redhills and they inspected one vehicle bearing Reg.No.TN 64 P 1042 moving from Poneeri towards Redhills and conducted enquiry with A-3 and A-2 and found that 18 nos. of plastic gunny bags containing 451 Kgs of ganja. Hence, the case.

3. The learned counsel for the petitioner would submit that the petitioner is arrayed as A6. Even according to the case of the prosecution, the petitioner has been implicated in this case only on the confession statement



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recorded from A1 and A3, from whom the recovery has been made, other than that there is no material evidence to connect the petitioner to the alleged crime.

He would further submit that the trial is going on and the prosecution has examined P.W.1 to P.W.7. From the evidence, it is seen that P.W.7, who is the Investigating Officer, in his cross-examination, has admitted that from A5 and the petitioner, no contraband has been seized and he had also admitted that no other documents have been produced to link the petitioner with other accused. He would further submit that A5, who is the similarly placed person who stands on the same footing had been granted bail by this Court in Crl.O.P.No.23844 of 2022, dated 30.09.2022. He would further submit that when there is absolutely no material available as against the petitioner, the petitioner has satisfied the twin conditions as required under Section 37 of the NDPS Act. However, he would also submit that without prejudice, the petitioner is prepared to deposit the value of the contraband to any welfare scheme of the Government and hence, he prays for grant of bail to the petitioner.

4. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that there are totally 7 accused in which the petitioner is arrayed as A6. After completion of investigation in Crime No.3789



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of 2020, the respondent police filed a final report and the same has been taken cognizance in C.C.No.32 of 2021 on the file of the Principal Sessions NDPS Court at Chennai. Now, the prosecution so far examined P.W.1 to P.W.7 and about to complete the Trial, within a period of one month. It is alleged that the petitioner along with A5 procured dry ganja illegally from Andhra Pradesh and the same was sold to A1 through A2 and A3. Though, no contraband was seized from the petitioner, the petitioner along with other accused were in constructive possession of ganja weighing 451 Kgs. It is a commercial quantity and as such the Section 37 of NDPS Act is applicable in this case and the burden is on the accused to make out a case to satisfy the Court that there are reasonable grounds to believe that they are not guilty of such offence. He would further submit that A2 and A3 have filed an application to recall the prosecution witnesses and the trial is in crucial stage. At this stage, if bail is granted to the petitioner, there is every possibility of the petitioner absconding. Hence, he vehemently opposed to grant bail to the petitioner.

5. At this juncture, the learned counsel for the petitioner would submit that the petitioner has permanent residence in Andhra Pradesh and he is ready and willing to furnish two blood related sureties and also furnish the copies of



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the original title deed of any immovable property to protect the interest of the prosecution.

6. Heard Mr.Sathyamurthy, learned counsel for the petitioner and Mr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials placed on record.

7. It is seen from the records that the petitioner is arrayed as A6. According to the case of the prosecution, he has been implicated as an accused only on the confession statements of A1 to A3, from whom the recovery has been made. It is alleged that the petitioner along with A5 have supplied the contraband to A1 to A3. During the course of the trial, the prosecution has examined P.W.1 to P.W.7. It is the evidence of P.W.7, who had conducted the investigation that no contraband seized from the petitioner and no documents were produced before the trial Court to link the petitioner with other accused.

8. This Court is of the opinion that the petitioner has made out *prima facie* case to satisfy the twin conditions as contemplated under Section 37 of NDPS Act. That apart, this Court had also granted bail to the similarly placed



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accused named A5 in Crl.O.P.No.23844 of 2022.

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9. In order to curb the illegal activities of smuggling of ganja, this Court is of the opinion that the petitioner shall deposit the original title deed of any immovable property either belonging to the petitioner or his relatives or friends to the value of 10 lakhs to the credit of Crime No.3789 of 2020 and shall make a non-refundable deposit of Rs.50,000/- to the credit of "The Dean, Rajiv Gandhi Government General Hospital, Chennai", without prejudice to his rights and contentions before the trial Court.

10. Merely, because the petitioner has deposited the said amount, it would not amount to admission of their guilt. Therefore, it is open to the trial Court to deal with the case independently.

11. Considering the facts and circumstances of the case and the voluntary submission made by the petitioner and taking note of the fact that the petitioner is in judicial custody from 04.09.2020, this Court is inclined to grant bail to the petitioner.

12. Accordingly, the petitioner is ordered to be released on bail on condition to deposit the original title deed of any immovable property either belonging to the petitioner or his relatives or friends to the value of 10 lakhs to



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the credit of Crime No.3789 of 2020 and the petitioner is also directed to make a non refundable deposit of **Rs.50,000/- (Rupees Fifty Thousand only)** by way of **Demand Draft/RTGS/NEFT to the credit of the Dean, Rajiv Gandhi Government General Hospital, Chennai**, and on complying with the above **conditions**, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five thousand only) with two blood related sureties, for a like sum to the satisfaction of the Principal NDPS Court, 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 petitioner shall furnish the proof of his permanent residence at the time of executing sureties.

[c] the petitioner shall report before the respondent Police daily at 10.30 a.m., until further orders;

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



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Anu/Gd

[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 abscond, a fresh FIR can be registered under Section 229A IPC.

14.10.2022

Anu/Gd

To

- 1.The Principal Sessions NDPS Court at Chennai.
- 2.The The Inspector of Police,
M4, Redhills Police Station,
Chennai.
3. The Central Prison,
Puzhal.
- 4.The Public Prosecutor,
High Court of Madras.

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