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CrI.OP.No.24095 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

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

CrI.OP.No.24095 of 2022

Lokeshwaran

..Petitioner

Vs.

State through

The Inspector of Police,

B-3, Kadambathur Police Station,

Thiruvallur District.

(In Crime No.76 of 2022)

..Respondent

PRAYER:Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner/Accused No.12 on bail in Crime No.76 of 2022 on the file of the respondent.

For Petitioner : Mr.S.Abdul Rahuman

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 11.04.2022 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B), 22(b), 22(c), 25 and 29(1) of NDPS Act, in Crime No.76 of 2022, seeks bail.



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2. The case of the prosecution is that on 11.04.2022 at 20.20 hrs, on the basis of the confession statement of A7, the respondent Police went to Karkurai Street near Tiruvallur Railway Station, wherein the petitioner along with A10 and A11 were found in possession of 2 ½ Kgs of Ganja. Hence, the complaint.

3. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A12. Even according to the case of the prosecution, on the confession statement of A7, the petitioner has been falsely implicated in this case. He would further submit that the co-accused A1, A2, A4, A5, A6, A10 and A11 were granted bail by this Court. Hence, he prays for grant of bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent police would submit that there are totally 12 accused in which the petitioner is arrayed as A12. The petitioner along with A10 and A11 were found in possession of 2 ½ Kgs of Ganja. Hence, he vehemently opposed grant of bail to the petitioner.



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5. Based on the confession statement of A1 to A4, other accused persons were arrested and the contraband was seized. Based on their confession statement, they went to the Thiruvallur Railway station and apprehended other accused persons and seized 2.5 Kgs of Ganja from A10. He was arrested and released on bail by this Court. Therefore, the prosecution failed to prove that all the accused persons were in constructive possession of the contraband. Though the contraband seized from each of the accused, it cannot be a ground that it is a commercial quantity and it is an in-between quantity. That apart, the entire contraband after seized from the accused persons, even till today not produced before the concerned Court. Therefore, the twin condition as contemplated under Section 37 of NDPS Act would not apply if the quantity seized is not a commercial quantity for granting bail.

6. Considering the above facts and circumstances of the case, and also taking note of the fact that the petitioner is in judicial custody from 11.04.2022, this Court is inclined to grant bail to the petitioner.

7. Accordingly, the petitioner shall deposit a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) as non refundable deposit to the credit of



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the **RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600034; Ph No.8939065431** 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 Principal Special Court under EC and 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 petitioner shall deposit a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) as non refundable deposit to the credit of the **RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600034; Ph No.8939065431.**

[c] the petitioner shall report before the respondent Police daily at 10.30 a.m., and 05.30 p.m, until further orders.

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



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[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.

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G.K.ILANTHIRAIYAN, J.

mn

To

- 1.The Principal Special Court under EC and NDPS Act, Chennai.
- 2.The Inspector of Police,
B-3, Kadambathur Police Station,
Thiruvallur District.
3. The Central Prison,
Puzhal.
- 4.The Public Prosecutor,
High Court of Madras

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