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CrI.OP.No.23844 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2022

CORAM

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

CrI.OP.No.23844 of 2022

Nakka BanuPrakash

..Petitioner

Vs.

State Represented by
The Inspector of Police,
M4, Redhills Police Station,
Chennai-600052.
(In C.C.No.32 of 2021)

..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.32 of 2021 on the file of the Principal Sessions NDPS Court at Chennai.

For Petitioner : Mr.S.Karthikeyan for
Mr.V.Karnan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

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The petitioner, who was arrested and remanded to judicial custody on 05.09.2020 for the offences punishable under Sections 8(c) read with 20(b)(ii)(C), 25 and 29(1) of NDPS Act and Section 212 of 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 the petitioner along with other accused were found in possession of 451 Kgs of Ganja illegally. Hence, the complaint.

3. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A5. Even according to the case of the prosecution, on the confession statement of A1 to A3, the petitioner has been falsely implicated in this case. There were no material evidences produced before the Trial Court to connect the petitioner in the alleged crime. Admittedly, there was no recovery from the petitioner and he was arrested and remanded to judicial custody on 05.09.2020. Now, the prosecution have examined P.W.1 to P.W.7. P.W.7 is an Investigating Officer. In the cross examination of P.W.7, he admitted that from A5 and A6, no contraband was seized. Further, to connect the petitioner with



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other accused persons, he did not produce any documents. He further submitted that A4 is also in the same footing and his bail application was considered by this Court and A4 was granted bail in Crl.O.P.No.21130 of 2022 dated 02.09.2022. 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 7 accused in which the petitioner is arrayed as A5. After completion of investigation in Crime No.3789 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. Insofar as the petitioner is concerned, he is the master brain behind the entire crime. He along with A6 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



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grounds to believe that they are not guilty of such offence. Hence, he vehemently opposed to grant bail to the petitioner.

5. It is seen from the records that the petitioner is arrayed as A5. According to the case of the prosecution, he has been implicated as an accused only on the confession statements of A1 to A3. Admittedly, the petitioner was not in possession of any contraband. It is also corroborated by the evidence of P.W.7, who had conducted the investigation. He deposed that no contraband was seized from the petitioner and no documents were produced before the Trial Court to connect the petitioner with other accused persons. Therefore, the petitioner made out a *prima facie* case to satisfy the twin conditions as contemplated under Section 37 of NDPS act. That apart, this Court had already granted bail to A4, who is also standing in the same footing in Crl.O.P.No.21130 of 2022 dated 02.09.2022.

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 05.09.2020, this Court is inclined to grant bail to the petitioner.



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7. Accordingly, the petitioner shall deposit a sum of **Rs.50,000/-** (Rupees Fifty 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** 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 Sessions NDPS Court at 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.50,000/-** (Rupees Fifty 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 Principal Sessions NDPS Court at Chennai, 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.

8. The Trial Court is directed to complete the trial, within a period of one month from the date of receipt of a copy of this order.

30.09.2022

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G.K.ILANTHIRAIYAN, J.

mn

To

- 1.The Principal Sessions NDPS Court at Chennai.
- 2.The The Inspector of Police,
M4, Redhills Police Station,
Chennai-600052.
3. The Central Prison,
Puzhal.
- 4.The Public Prosecutor,
High Court of Madras

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