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CrI.OP.No.23933 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

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

CrI.OP.No.23933 of 2022

Yasar Arabath

..Petitioner

Vs.

State rep. by
The Inspector of Police,
H-6, R.K.Nagar Police Station,
Chennai.
(Cr.No.87 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.204 of 2021 on the file of the II Additional Special Judge under NDPS Act, Chennai pending trial.

For Petitioner	: Mr.V.K.Sathyamurthy
For Respondent	: Mr.A.Gokulakrishnan Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 04.03.2021 for the offences punishable under Sections 8(c) r/w Section 20(b)(ii)(c), 25 and 29(i) of the NDPS Act in CC.No.204 of 2021 on the file of



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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.

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 sitting 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.



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3. The learned counsel for the petitioner would submit that there are totally eight accused, in which the petitioner is arrayed as A2. 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 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. Insofar as the petitioner is concerned, the respondent 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. He would further submit that the co-accused had been released on bail by this Court in CrI.O.P.No.19917 of 2022 dated 20.09.2022. However, on instructions, he would further submit that he is ready and willing to deposit a sum of Rs.50,000/-, by way of Demand Draft to the Arignar Anna Memorial Cancer Hospital & Research Institute, Kancheepuram. Therefore, he prayed for



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bail to the petitioner.

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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 A2. Totally, 76 kg of 'ganja' was recovered from the accused, wherein from this petitioner, 26 kg of ganja was recovered. Further, two auto and 2 two-wheelers which were involved in the offence were seized by 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. Considering the facts and circumstances of the case and the period of incarceration suffered by the petitioner, this Court is inclined to grant bail to the petitioner on certain conditions.

6. Accordingly, the petitioner shall donate a sum of Rs.50,000/- (Rupees fifty thousand only) to the credit of the RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864;



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No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600034; Ph

No.8939065431 and on such donation the petitioner shall 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 Additional NDPS Court-II, 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) 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 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].



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[g] If the accused thereafter absconds, a fresh FIR can be registered

under Section 229A IPC.

11.10.2022

Anu

To

1.The Additional NDPS Court-II, Chennai

2.The Inspector of Police,
H-6, R.K.Nagar Police Station,
Chennai.

3. The Superintendent,
Central Prison,
Puzhal.

4.The Public Prosecutor,
High Court of Madras.



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G.K.ILANTHIRAIYAN, J.

Anu

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