



WEB COPY



Crl.O.P.No.24061 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

CORAM

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

Crl.O.P.No.24061 of 2022

A.Nagoor Hanifa

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
H-5 New Washermenpet Police Station,
Chennai.

(Crime No.155 of 2022).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleased to enlarge the petitioner on bail in connection with the Crime No.155
of 2022 pending investigation on the file of the respondent Police.

For Petitioner : Mr.N.Nishar Ahamed

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



Crl.O.P.No.24061 of 2022

WEB COPY

ORDER

The petitioner, who was arrested and remanded to judicial custody on 09.03.2022 for the alleged offences punishable under Sections 8(c) r/w 20(b)(ii)(B), 22(a) of NDPS Act, 1985 @ 8(c) r/w 20(b)(ii)(B), 22(a), 22(c) of NDPS Act in Crime No.155 of 2022 on the file of the respondent Police, seeks bail.

2. The case of the prosecution is that on 06.03.2022, on receiving the secret information about illegal sale of Ganja, the Sub Inspector of Police along with his team conducted search, in which they found the petitioner along with the other accused were found in possession of 2 Kgs of Ganja and 760 Grams of Methamphetamine and the respondent police seized the contraband and arrested the petitioner along with the other accused. Hence, the complaint.

3. The learned counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has been falsely roped in in this case. On 04.03.2022, while the petitioner was going towards his house in



Crl.O.P.No.24061 of 2022

his two wheeler bearing registration No. TN-04-AJ-2551 along with his son, he was taken into illegal custody by the respondent police at 11.30 pm., and thereafter, he was taken by the respondent in a car along with two other accused viz., Kadher Mohideen and Yunus to Rakesh Inn Lodge, Moosa street, T.Nagar and all of them were illegally detained till noon of 05.03.2022. Thereafter, the petitioner was taken to Theevu Thidal between 4.00 p.m. and 5.00 pm., in a Tempo traveller maxi cab bearing No.TN-01-G-4831 and one another accused Sheik Mohammed was arrested at Thillai Nayagam Main Road, Perambur. Thereafter, he was brought to the respondent police station at midnight 1.00am and 2.00 am., and then, taken to the DC office which is in the first floor of the respondent police station and kept there between 6.00 pm and 7.00 pm.

4. He would further submit that from 04.03.2022, he was kept in illegal detention and on 08.03.2022, the petitioner and the other two persons were assaulted by the respondent Police while they were kept in illegal detention and later they were taken to Stanley hospital for medical examination and they were produced for remand before the learned Principal Special Judge Residence at 1.20 a.m., on 09.03.2022. The petitioner and



CrI.O.P.No.24061 of 2022

other accused have informed the learned Judge about the illegal detention and the injuries sustained by them and the learned Judge has also noted about the injuries sustained by one Khadhar Mohideen and the injuries sustained by the petitioner in his buttocks and the respondent had informed that they were already been given medical aid. The learned counsel for the petitioner would further submit that the learned Judge after perusing the records had also noted that the alleged offence had taken place on 06.03.2022 and the first accused was arrested on the same day and the other accused were stated to be arrested on 08.03.2022 at about 2.30 pm., only after the Court has passed an order in a petition on behalf of one of the accused, filed under Section 97 of Cr.P.C. He would further submit that though the respondent has arrested the petitioner on 09.03.2022, the seized contraband had been produced before the Court only on 24.03.2022 in A.No.185 of 2022 thereby creating a doubt with regard to the registration of the case. He would also submit that the entire case is a foisted one and the petitioner has no connection with the other accused and only as a pre-emptive measure the petitioner has been implicated in this case. He would further submit that there is no previous case as against the petitioner and there is no likelihood of the petitioner committing any offence. He would also submit that it is a



Crl.O.P.No.24061 of 2022

clear case where the petitioner has made out a *prima facie* case satisfying the requirements of twin conditions under Section 37 of NDPS Act for grant of bail and thereby, he prays for grant of bail to the petitioner.

5. The respondent has filed a detailed counter. The relevant paragraphs are extracted hereunder:-

"9. It is submitted that based on the confession statement of A-1, on 27.03.2022, I have arrested the accused A-3/Bala @ Balaji and recorded his confession statement and produced before the XV Metropolitan Magistrate Court, George Town, Chennai and remanded him into Judicial Custody. On 21.07.2022, I have arrested the accused A-10/Ramesh Aytha and recorded his confession statement and produced before XV Metropolitan Magistrate Court, George Town, Chennai and remanded him into Judicial Custody.

10. It is submitted that on 24.03.2022 I have produced the seized GANJA 2kg and 760 gram Methamphetamine from A-1 to A-9 before the Special Court for EC/NDPS Act, Chennai and the same was taken on file and assigned A.No.185 of 2022, dated 24.03.2022.



CrI.O.P.No.24061 of 2022

Property Seizure

<i>S.No</i>	<i>Name of the accused</i>	<i>Ganja</i>	<i>Methamphetamine</i>
1	A-1/Rohit Manikandan	02Kg	05 gram
2	A-2/Khadar Moideen		80 gram
3	A-4/Nagoor Haniba		150 gram
4	A-5/Kaja Nawas		65 gram
5	A-6/Mohammed Javid		10 gram
6	A-7/Thamim Roslan		60 gram
7	A-9/Sheik Mohammed		390 gram
	Total	02 Kg	760 gram

6. The learned Government Advocate (CrI.Side) appearing for the respondent police would submit that the petitioner along with the other accused were involved in the Narcotics business and they found in possession of 2 kg of Ganja and 760 gram of Methamphetamine, which is a commercial quantity. He would further submit that based on the confession of A2, the petitioner/A4 was arrested on 08.03.2022 and the seized contrabands were produced in A.No.185 of 2022 before the Court concerned on 24.03.2022. He would further submit that there is no previous case as against the petitioner. However, he would oppose to grant bail to the petitioner.



Crl.O.P.No.24061 of 2022

WEB COPY

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and perused the materials available on record.

8. It is the case of the petitioner that he was taken into custody by the respondent on 04.03.2022 and that he was produced before the Special Judge only on 09.03.2022. The further contention of the petitioner is that while he was in illegal detention, he and the other detenus were tortured and they have sustained injuries and when they were produced for remand before the learned Special Judge at his residence on 09.03.2022 at 1.20 a.m., the learned Special Judge had noted the injuries inflicted on him and he had also noted that only after an application filed by the co-detenu under Section 97 of Cr.P.C., the accused were produced for remand. It is the further contention of the petitioner that the contraband alleged to be recovered from the petitioner was not produced at the time of his remand and they have been produced before the Court only on 24.03.2022 vide A.No.185 of 2022, thereby, creating the doubt with regard to the case of the prosecution. Therefore, this Court is of the opinion that the petitioner has made out a



Crl.O.P.No.24061 of 2022

prima facie case satisfying the conditions required under Section 37 of NDPS Act for grant of bail.

9. In view of the above, this Court is inclined to grant bail to the petitioner. Accordingly, 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 sureties**, each for a like sum to the satisfaction of the **learned XV Metropolitan Magistrate, GT Court**, 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 report before the XV Metropolitan Magistrate, GT Court at 10.30 a.m., on all working days and report before the respondent police on every Saturday and Sunday at 5.30p.m., until further orders;

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

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial;



Crl.O.P.No.24061 of 2022

[e] 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]***;

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

10.10.2022

ham

To

- 1.The XV Metropolitan Magistrate, GT Court.
- 2.The Inspector of Police,
H-5 New Washermenpet Police Station,
Chennai.
3. The Puzhal Prison, Chennai.
4. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.24061 of 2022

A.D.JAGADISH CHANDIRA.,J.

ham

Crl.O.P.No.24061 of 2022

10.10.2022