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Crl.OP.No.24633 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

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

Crl.OP.No.24633 of 2022

Mohammed Riaz

..Petitioner

Vs.

The State represented by
The Inspector of Police,
H-6, R.K.Nagar Police Station,
Chennai – 600 021.

..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 Court exclusive for Trial of cases under NDPS Act, Chennai.

For Petitioner : Mr.E.Weillington for
Mr.A.Elumalai

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 05.03.2021 for the offences punishable under Sections 8(c), 20(b)(ii)(C), 25 and 29(1) of NDPS Act, 1985, in C.C.No.204 of 2021 on the file of the II



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Additional Special Court exclusive for Trial of cases 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 setting 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 A6.



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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, only on the confession statement of A8, the petitioner has been falsely implicated in this case. He would further submit that there is no recovery from the petitioner and the petitioner was not in possession of the alleged contraband. After completion of investigation, the respondent filed final report and the same has been taken cognizance in C.C.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. As per the testimony of the PW1, he weighed the alleged seized 'ganja' from A1 and took samples and marked the samples as S1 and S2 and marked the remaining contraband as P1. Thereafter, he prepared the seizure mahazar and seized the vehicle. Insofar as A2 is concerned, he 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



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were engaged in another case in Crime No.86 of 2021. It was marked as Ex.D1.

Therefore, there is a fair chance for acquittal. He would further submit that A1 and A7 were already arrested and released on 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 eight accused, in which the petitioner is arrayed as A5. Totally, 76 kgs of 'ganja' were recovered from the accused, wherein from A1, 25 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 and it can be decided only during evidence let in trial and it cannot be presumed at this stage of bail. Hence, he vehemently opposed to grant bail to the petitioner.

5. It is seen that huge quantity of drug was recovered from the accused persons. Though, this Court dismissed the bail petition which was earlier filed by the petitioner, the learned counsel for the petitioner perused the evidence of P.W.1, who recovered the contraband from the accused. It is



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relevant to extract the portion of his deposition that according to him, he along with his police team after entered into the general diary about their inspection and they went to the place of occurrence at about 5.00 p.m. They also seized two autos and one two wheeler from seven persons and 25 Kgs of Ganja from one auto, 26 Kgs of Ganja from another auto and 25 Kgs of Ganja from the two wheeler. He further deposed that recording the confession statement of A1 to A3 mentioned in the 1st paragraph, the contraband which was seized from A1, was not found in the mahazar and as such, he marked only the auto bearing Registration No.TN 05 BD 7510 as Ex.P3.

6. Therefore, the petitioner made out a prima-facie case to satisfy the twin conditions as contemplated under Section 37 of NDPS Act. That apart, the co-accused/A7 was already released on bail by this Court in Crl.O.P.No.16081 of 2022 by an order dated 12.07.2022 and A1 was also already released on bail by this Court in Crl.O.P.No.19917 of 2022 by an order dated 20.09.2022.

7. Considering the above facts and circumstances of the case and also considering the period of incarceration by the petitioner from the date of



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his arrest viz., 05.03.2021, this Court is inclined to grant bail to the petitioner with certain conditions.

8. 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 II Additional Special Court exclusive for Trial of cases under 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.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.**



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[c] the petitioner shall report before the II Additional Special Court exclusive for Trial of cases under NDPS Act, Chennai, daily at 10.30 a.m., and 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]**.

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

12.10.2022

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The II Additional Special Court exclusive for Trial of cases under NDPS Act, Chennai.
- 2.The Inspector of Police,
H-6, R.K.Nagar Police Station,
Chennai – 600 021.
3. The Central Prison -1,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court of Madras.

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