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CrI.OP.No.26537 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

CORAM

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

CrI.OP.No.26537 of 2022

Kowsaruthin

..Petitioner

Vs.

State, Rep. by
The Inspector of Police,
B-3 Kadambathur Police Station,
Tiruvallur.

(Crime No.76 of 2022)

..Respondent

Prayer: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail pending trial in Crime No.76 of 2022 on the file of the respondent Police.

For Petitioner : Mr.S.M.Raghuram

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 11.04.2022 at the hands of the respondent police for the offences punishable under Sections 8(c), 20(b)(ii)(B), 22 (b), 22(c), 25 and 29(1) of NDPS Act, 1985, in Crime No.76 of 2022, seeks bail.



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2. The case of the prosecution is that on 11.04.2022, upon information received by the District Superintendent of Police and upon the instructions of the Superintendent of Police, Thiruvallore, the Sub Inspector of Police attached to the respondent proceeded to the Rajiv Gandhi Nagar, near Kadambathur Railway Station. According to the information, some persons were selling ganja in the car between 8.00 a.m. to 9.00 a.m. at Rajiv Gandhi Nagar near Kadambathur Railway Station. The Sub-Inspector of Police after informing the instructions given by the Superintendent of Police to the respondent at 7.00 a.m. got permission over phone at 7.15 a.m. and recorded the receipt of information in general diary at 7.30 a.m., left the police station at 7.45 a.m. with his police parties and reached the spot at 8.00 a.m. On the identification given by the informant, they secured A1 to A4. The said Sub Inspector of Police after complying the Section 50(1) Notice of NDPS Act searched the Baleno car bearing registration No. TN 10 BM 3339 and seized 15 Nos of LSD Stamp from the dash board of the car. Further, they also seized the said car and pulsar motor bike bearing registration No. TN 10 BK 0159 and two mobile phones in the presence of police witnesses. Two samples of each 2 numbers of LSD stamps marked as S1 and S2 were taken, later the petitioner/A1 was arrested and his confession statement was recorded. The said Sub-Inspector of Police complied



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50(2) Notice to the A2 and thereafter, he was arrested at 11.00 hrs. Thereafter, A3 was served with 50(2) Notice and searched the scorpio vehicle bearing No. TN 02 AT 7099. From the dash board of the car 10 numbers of LSD Stamps, 26 numbers of MDMA tablets and METH CRYSTAL weighing 1 gram were seized. He was also arrested and his confession statement was also recorded. Thereafter, A4 was served with 50(2) Notice and he was also arrested. Based on their confession statement, the respondent police arrested the petitioner and other accused persons. Hence, the case.

3. Based on the confession statement of A1 to A4, the petitioner 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 to 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 comply if the quantity



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seized is not a commercial quantity for granting bail.

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4. The learned counsel for the petitioner would submit that that the petitioner is arrayed as A8 in this case. Even according to the case of the prosecution, the petitioner was not in possession of any contraband and only on the basis of confession statement given by the co-accused, he was arrested and remanded to judicial custody. He would further submit that no recovery was made from the petitioner and A1 was already obtained bail by this Court in Crl.O.P.No.18358 of 2022. Hence, he prays for grant of bail to the petitioner.

5. Considering the above facts and circumstances of the case and also the period of incarceration by the petitioner from the date of arrest i.e.,11.04.2022, this Court is inclined to grant bail to the petitioner. Accordingly, **the the petitioner shall deposit a sum of Rs.25,000/- (Rupees Twenty Five 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, 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**



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related sureties, each for a like sum to the satisfaction of the **learned Principal**

Sessions Judge, for EC & NDPC Act 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.25,000/- (Rupees Twenty Five 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**, and that the receipt of such payment shall be produced before the concerned Magistrate at the time of executing the bond;

[c] the petitioner shall report before the respondent police twice daily at **10.30 a.m. and 5.30 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



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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.

14.11.2022

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Principal Sessions Judge, for EC & NDPC Act at Chennai.
- 2.The Inspector of Police,
B-3 Kadambathur Police Station,
Thiruvallore District.
- 3.Central Prison-II, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court of Madras.

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