



Crl.O.P.No.26724 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :11.11.2022

Pronounced on :15.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.26724 of 2022

Dhineshkumar

.. Petitioner

/versus/

The State represented by
Inspector of Police,
H-5, Washernmenpet Police Station,
Chennai District.
(Crime No.4482 of 2020)

.. Respondent

Prayer: Criminal Original Petition has been filed under Section 439 of Cr.P.C., to enlarge the petitioner on bail in C.C.No.134 of 2021 on the file of II Additional Special Court, NDPS Act Cases in Crime No.4482 of 2020 on the file of the respondent police.

For Petitioner :Mr.S.Kasirajan

For Respondent :Mr.N.S.Suganthan
Govt.Advocate (Crl.Side)



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ORDER

The petitioner was arrested on 18/12/2020 for his conspiracy to procure, transport and sell ganja along with the other accused. From his(A2) possession, 22 kgs of ganja was recovered. From his other co-conspirators A-1, the police recovered 22 kgs of ganja; and from A-3, the police recovered 2 kgs of ganja. All were arrested and remanded them to prison. On completion of investigation, this petitioner is arrayed as A-2 in C.C.No.134/2021 on the file of the learned II Additional Special Court for NDPS Act Cases, Chennai for the alleged offences under Sections 8(c) r/w 20 (b)(ii)(c), Section 25 and Section 29 (i) of the Narcotic Drugs and Psychotropic Substances Act, 1985(in short “NDPS Act”).

2. The learned counsel for the petitioner submitted that the petitioner is suffering incarceration for nearly two years without any progress in the trial. In his earlier bail petition, this Court dismissed it with direction to the Special Court to complete the trial as expedite as possible.



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Though about two months have lapsed, the trial Court has not yet commenced the trial for want of Presiding Officer. That apart, the prosecution has committed patent violation of the mandatory provisions of NDPS Act, which will satisfy the Court that there is no possibility of the accused being found guilty and convicted.

3. The Learned Counsel for the petitioner placed his submissions on three fold. First, pointing out the error in the time mentioned in arrest card of the accused persons and the time mentioned in their confession statements submitted that the case of the prosecution gets improbablised due to this discrepancies. The case of the prosecution is that the Investigating Officer got secret information on 18/12/2020 at about 07.15 hours, when he was on duty at New Washermanpet Police Station. Recording the said information, he left to the spot mentioned in the information after obtaining permission from the Inspector of Police and his Superior Officer. He reached the spot at 8.00 am intercepted A-1 proceeding in the TATA ACE van. From A-1, possession of 22 kgs of ganja was recovered and A-1 was



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arrested at 10.30 am. Thereafter, A-1 gave a confession statement implicating the petitioner herein as A-2 in the crime. Based on the information given by A-1 and recorded at 10.30 am, they proceeded to A-2 house and recovered 22 kgs of ganja from the backyard of A-2 house. As per the prosecution, A2 was arrested at 14.45 hours and the confession statement of A-2 recorded at 15.00 hrs. Based on the confession statement of A-2, the third accused was arrested with 2 kgs of ganja, which was alleged to have been given by A-2. Whereas the arrest card of A-3 shows that he was arrested on 18/12/2020 at 11.15 hrs. much prior to the arrest and confession of A-2. Therefore, it is highly improbable that A-1 and A-3 conspired together to procure ganja from Andra Pradesh. Pursuant to that, A-1 and A-2 transported 46 kgs of ganja from Andra Pradesh. 22kgs was given to A-1 and he was arrested on 18/12/2020 at about 08.15 hrs while transporting it and based on his confession A-2 was arrested at 14.45 hrs. Based on A-2 confession A-3 was arrested at 11.15 hrs.



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4. The learned counsel appearing for the petitioner further submitted that in all the arrest cards of A-1 to A-3, the intimation of their arrest is given to one Nazeema, W/o Jalaludeen the first accused. This is in total violation of Section 41-B of Code of Criminal Procedure and the guidelines of *D.K.Basu vs. State of West Bengal* reported in *([1997] 1 SCC 416)*

5. The learned counsel pointing out that the properties were not produced before the Special Court immediately after seizure. The reason for delay in forwarding the contraband before the Judicial Magistrate is different and the reason shown for the delay in forwarding the contraband to the Special Court is different. Either way, the contraband which was alleged to have seized on 18/12/2020 reached the Court only on 19/01/2021 and the reason for delay is not properly explained.

6. In the arrest card, the Crime number and Sections under which the accused were arrested have been mentioned, whereas the First



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Information Report came to be registered only at 18.30 hours of 18/12/2020.

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The Crime number and the Sections under which the case register found in the arrest cards of A-1 prepared at 10.30 hours, A-2 prepared at 14.45 hours and A-3 prepared at 16.15 hrs without any pale of doubt indicates that the police has foisted the case fabricating records, not informed the blood relatives or person interested in the accused. The contraband alleged to have been seized not produced before the Court forthwith but with considerable delay and without any genuine and acceptable reasons.

7. The learned Government Advocate (Crl.Side) appearing for the State filed counter stating that A-3 was not arrested at 11.45hrs as stated by the counsel for the petitioner. Kali (A-3) was arrested on the information given by A-2 at 14.45 hrs. From A-3, A-2, 2 kgs of ganja was recovered and enquiry with Kali revealed that the said ganja was supplied by this petitioner (A-2). The prosecution has collected materials to show, this petitioner is indulged in transporting commercial quantity of ganja from Andra Pradesh through A-1 and A-3 tried to sell it to the third parties. Based



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on his information, 22 kgs of ganja recovered from the backyard of his house. The delay in trial is not because of prosecution but because the accused took time to engage counsel to defend him.

8. The learned Government Advocate (Crl.Side) appearing for State submitted that an allegation regarding violation of Section 41-B of Cr.P.C., is only a procedural error and will not vitiate the trial. The gravity of crime, which fix reverse burden on the accused and the nature of crime procuring commercial quantity of ganja from Andra Pradesh and distributing it in Tamil Nadu through his agents, attracts the rigour of Section 37 of the NDPS Act and the petitioner herein is therefore not entitled for bail.

9. This Court, on considering the rival submissions, the commercial quantity of narcotic drug involved in the case and modus operandi of the accused persons concludes that the petitioner is not entitled for bail, in view of the rigour imposed in Section 37 of the NDPS Act.



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However, the accused persons in this case are in prison as under trial prisoners for nearly 2 years and trial is not yet commenced. Therefore, the Principal Judge, Special Court for NDPS Cases, Chennai is directed to make suitable arrangements to expedite the trial of this case and complete it within a period of 4 months from today.

10. With the above directions, this Criminal Original Petition for bail is dismissed.

15.11.2022

Index:yes/no
speaking order/non speaking order
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To :

1.II Additional Special Court for NDPS Act Cases,
Chennai.

2.The Inspector of Police, H-5, Washernmenpet Police Station,
Chennai District.

3.The Central Prison, Puzhal.

4.The Public Prosecutor, High Court, Madras.

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DR.G.JAYACHANDRAN,J.

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Delivery Order made in
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