

Crl.O.P.No.28261 of 2022

Dr.G.JAYACHANDRAN.J.,

This Criminal Original Petition has been filed to grant bail to the petitioner in C.C.No.38 of 2022 on the file of the learned I Additional Special Judge, EC cum NDPS Cases, Chennai.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) appearing for the respondent.

3. The petitioner is the third accused in the case, where the prosecution has seized 1.5 kg of Ganja and 1125 Nitrovet 10 mg tablets. There are five accused and one among them is juvenile conflicting law. They had conspired to procure the narcotic drugs and Nitrovet tablets illegally for sale to the consumers. Based on the secret information received on 19.07.2021, the Sub-Inspector of Police, attached to the respondent police, proceeded towards the scene of occurrence and apprehended one Sivasankaran. This petitioner and two others, who were with A1/Sivasankaran @ Pittu, ran away from the scene of occurrence on seeing

the raid. Subsequently, others were arrested including the fifth accused, who is the juvenile conflicting law. This petitioner is the third accused. The confession statement of the accused persons, A1 and A2, implicated this petitioner herein as one of the conspirators in the crime.

4. Earlier, when this petitioner sought for bail, this Court on considering the gravity of the offences and antecedents of this petitioner, dismissed the bail petition on 02.09.2022. Thereafter, the second, third and fourth bail petitions were dismissed by this Court on 08.06.2022, 25.07.2022 and 02.09.2022 respectively. The fifth bail petition has been filed now stating that A1, A2 and A5 were granted bail and the previous cases, alleged to be taken adverse notice, are all of IPC and they are not the offences under Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter “NDPS Act”] and therefore the petitioner, who is suffering incarceration for the past one year shall be granted bail since there is no progress in the trial.

5. The learned counsel for the petitioner would submit that even assuming that the petitioner was a co-conspirator in the crime of narcotic

drug alleged to have been seized, since the narcotic drugs does not fall within the definition of commercial quantity, the petitioner is entitled for bail. The rigor of Section 37 of NDPS Act is not attracted in this case since the contraband alleged is 1.5 kg of Ganja and 1125 Nitrovet tablets.

6. Further the learned counsel for the petitioner submitted that the confession statement of the co-accused cannot be a reason to deny the bail since the confession to the Police officers by accused is inadmissible evidence. Except the confession statement, there is no material against the petitioner for implicating him in the offences under Sections 8(c), 20(b)(ii)(B), 22(c), 25 and 29(1) of NDPS Act and Sections 147 and 148 of IPC.

7. The learned Government Advocate (Criminal side) appearing for the State would submit that the petitioner along with the other accused, pursuant to the conspiracy, had procured Ganja and Nitrovet tablets for on road sale. Based on the information received, the raid was conducted and five persons standing suspiciously with a two wheeler bearing Registration No.TN-18-E-0835 were surrounded by the police. However, three of them

managed to escape from the scene of occurrence and the rest of them were apprehended, who were arrayed as A1 and A2. From their possession, four packets of Nitrovet tablet, totally 1125 in numbers and 876 grams in weight were recovered. Subsequently this petitioner and the two other persons, who escaped from the scene of occurrence, were apprehended.

8. Regarding the bail granted to the co-accused the learned Government Advocate (Criminal side) submitted that after securing bail, one of them absconded and had committed breach of bail conditions and yet another person had also committed breach of bail conditions by committing similar offences under NDPS Act and therefore they were arrest and remanded. As far as A5 is concerned, being juvenile, he is treated under the Juvenile Justice (Care and Protection of Children) Act, 2015. The final report has been filed and taken cognizance by I Additional Special Court in C.C.No.38 of 2022 and when the matter was posted on 10.11.2022 for framing charge, one of the accused failed to appear and another accused person, who was present in the morning for a different case, was apprehended by the police. Thus, the bail granted to A1 and A4 was cancelled as they breached the bail conditions and one among them has

already been secured and another person is under search. Therefore there cannot be any parity.

9. Further, the learned Government Advocate (Criminal side) would submit that the tablets, 1155 is numbers, is commercial quantity, since its total weight is 876 grams and the calculation submitted by the learned counsel for the petitioner to show that it is not a commercial quantity was only based on the strength of the tablet, i.e., 10 mg and not weight of the tablet.

10. This Court, after giving anxious consideration to the rival submission, finds that it is a case where 876 grams of Nitrovet tablets and Ganja of 1500 kg was seized and this person according to the prosecution was present at the scene of occurrence but on seeing the raid, he ran away from the scene of occurrence. Thereafter, he was apprehended by the police. The case is posted for framing of charge. If the accused, who has bad antecedent, is released on bail, there is every possibility of derailing the progress of the trial.

11. Insofar as the quantity of the contraband alleged to have been seized, it is the weight of the tablet to be taken into account and not its strength as per the judgment of the Hon'ble Supreme Court in ***Heeralal*** case. Since the total weight of the tablet seized is about 876 grams, the rigor of Section 37 of the NDPS Act applies. The counter filed by the prosecution as well as material available, makes out *prima facie* case to file charge against the petitioner for being the conspirator in possession and the transport of Narcotic and Psychotropic substances of commercial quantity.

12. In view of the above, there is no reason to entertain this bail petition. Accordingly, this Criminal Original petition is dismissed.

23.11.2022

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