



WEB COPY



CrI.OP.No.28138 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

CORAM

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

CrI.OP.No.28138 of 2022

Arunmon

..Petitioner

Vs.

The State represented by
The Deputy Superintendent of Police,
Gummidipoondi Sub-Division,
F-3, Aarambakkam Police Station,
Tiruvallur District.
(Crime No.1497 of 2020)

..Respondent

Prayer:Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail pending investigation in Crime No.137 of 2022 on the file of the II Additional Special Judge for NDPS Court, Chennai.

For Petitioner : Mr.O.Chembulingam

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 25.12.2022 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(c) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, in C.C. No.137



Crl.OP.No.28138 of 2022

of 2021 on the file of II Additional Special Judge for NDPS Court, Chennai,
seeks bail.

2. The case of the prosecution is that on receipt of the secret information, the respondent and his team went to the scene of crime at Enavur Tollgate and intercepted the accused in a bus and found that the accused persons were in possession of contraband (Ganja) each 12 Kgs. After seizing the same and after following the procedures laid under NDPS Act, both were arrested and remanded to judicial custody. Hence the case.

3. The learned counsel for the petitioner would submit that there are totally two accused in this case in which, the petitioner is arrayed as A2. Even according to the case of the prosecution, both the accused were found in possession of 12 Kgs of Ganja each. Therefore, it would not come under commercial quantity. Now, the respondent completed the investigation and filed final report and the same has been taken cognizance by the II Additional Special Judge for NDPS Act, Chennai, in C.C.No.137 of 2021 and it is pending for the past two years and no charge sheet is framed as against the accused persons.



Crl.OP.No.28138 of 2022

3. On perusal of the documents annexed along with final report revealed that the prosecution failed to produce any piece of evidence to prove that the petitioner and A1 conspired together and they were in conscious and constructive possession of contraband weighing 24 Kgs to attract bar of Section 37 of NDPS Act. Further, the petitioner belong to Kerala and the first accused belong to Theni, Tamil Nadu. According to the prosecution, both were travelled together in a bus, which was coming from Andhra Pradesh to Chennai and on receipt of the secret information, the said bus was intercepted at Enavur Tollgate and found that the accused were in possession of 12 Kgs of Ganja each. He also pointed out that from the notice under Section 50 of NDPS Act itself. The prosecution mentioned the date of occurrence as 24.12.2020 Morning 15.45 hrs. In the seizure magazar, they mentioned the date as 24.12.2020 at 16.30 hrs and the same was corrected from 4 'O' clock and in the arrest report submitted under section 57 of NDPS Act, they mentioned the date of occurrence as 24.12.2020 at about 16.15 hrs. There was contradiction in respect of time of occurrence. Further, in few places they mentioned the time of occurrence as Morning 13 hrs, 15 hrs and 14 hrs and in few places they mentioned as Afternoon 15 hrs. A special report received by the respondent on 24.12.2020, without mentioning the time of seizure of contraband. Further, on



CrI.OP.No.28138 of 2022

perusal of FIR revealed that it was received at about 6.45 p.m., on 25.12.2020 therefore, all the discrepancies in their own documents revealed that the date of occurrence and the time of occurrence itself differs and on seeing all the materials cumulatively, the prosecution failed to establish the case.

4. The learned Additional Public Prosecutor appearing for the respondent police would submit that there are two accused in this case in which, the petitioner is arrayed as A2. Both the accused persons were conscious and constructive possession of contraband weighing 24 Kgs and it is a commercial quantity. Therefore, there is bar under Section 37 of NDPS Act. Now, charge sheet has been filed and the same has been taken cognizance by the II Additional Special Judge for NDPS Court, Chennai, in C.C.No.137 of 2021.

5. He would further submit that the point raised by the learned counsel for the petitioner can be considered only during the trial and it is not the ground to grant of bail, since it is a commercial quantity. The petitioner also failed to fulfil the twin conditions as contemplated under Section 37 of NDPS Act.



Crl.OP.No.28138 of 2022

WEB COPY

6. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and perused the materials available on record.

7. It is seen that there are two accused in this case in which, the petitioner is arrayed as A2. According to the prosecution, on 24.12.2020 at about 13 hrs, on receipt of secret information, the respondent and his team went to the scene of crime and intercepted the bus at Enavur Tolgate and found the accused were in possession of Ganja weighing 12 Kgs each. The only point for consideration is that whether the prosecution submitted any material to connect the petitioner and the A1 in order to bring the charges under Sections 8(c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act.

8. Admittedly, the prosecution failed to examine the driver and conductor of the bus. The prosecution also failed to produce any material to connect the accused 1 and 2 such as tickets and other documents if any. Further, the first accused belong to Theni, Tamil Nadu and the petitioner belong to Kerala, both were travelled in the bus, which was coming from Andhra Pradesh



CrI.OP.No.28138 of 2022

to Chennai and they were found in possession of 12 Kgs of Ganja each. Except the fact that the petitioner and the first accused travelled together in a same bus, no other material produced by the prosecution to connect them.

9. In this regard, the learned counsel for the petitioner relied upon the judgment reported in **CDJ 2005 SC 680** in the case of **Amarsingh Ramjibhai Barot Vs. State of Gujarat**, the relevant portion of the abovesaid judgment reads as follows;-

“ 7. The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21(c) of the NDPS Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the NDPS Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section 29 was applicable, the total quantity of opium recovered was 920 grams plus 4.250 kgs. The counsel urged that because of this error the High Court took the wrong view that the total recovered opium was of “commercial quantity” and, therefore, attracted Section 21(c) of the NDPS Act.



8. Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted.”

Thus, it is clear that there is no material to connect the A1 and A2, in order to prove the conspiracy between them within the meaning of Section 29 of NDPS Act. Therefore, the contraband which was allegedly possessed by the petitioner is not coming under the commercial quantity. Further, the petitioner was arrested and remanded to judicial custody from 25.12.2020 even after filing final report and after having taken cognizance by the trial Court, which is pending for the past two years without even framing charges.

10. Taking into consideration the facts and circumstances of the case and the quantity recovered from the petitioner and also considering the period of incarceration undergone by the petitioner and taking note of the Section 37



Crl.OP.No.28138 of 2022

of NDPS Act, this Court is inclined to grant bail to the petitioner with certain conditions.

11. 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.25,000/- (Rupees Twenty Five thousand only) with **two blood related sureties**, each for a like sum to the satisfaction of the II Additional Special Court 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.**

[c] the petitioner shall report before the trial Court daily at 10.30 a.m., and



CrI.OP.No.28138 of 2022

5.30 p.m., until further orders;

WEB COPY

[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.

23.11.2022

ata

G.K.ILANTHIRAIYAN, J.

ata



Crl.OP.No.28138 of 2022

WEB COPY

To

- 1.The II Additional Special Court under NDPS Act,
Chennai.
- 2.The Deputy Superintendent of Police,
Gummidipoondi Sub-Division,
F-3, Aarambakkam Police Station,
Tiruvallur District.
3. The Central Prison,
Puzhal
- 4.The Public Prosecutor,
High Court of Madras.

Crl.O.P.No.28138 of 2022

23.11.2022