



WEB COPY



Crl.O.P.No.28975 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.28975 of 2022

Sushil M Thakare

... Petitioner

Vs.

The Intelligence Officer,
Narcotics Control Bureau (NCB),
Chennai Zonal Unit, Chennai.
(NCB File No.48/1/13/2018-NCB/MDS)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail in C.C.No.13 of 2019 on the file of
the 1st Addl, Special Court for Exclusive Trial of Cases under NDPS Act
Cases at Chennai.

For Petitioner : M/s.Mamta Pandey

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor



Crl.O.P.No.28975 of 2022

WEB COPY

ORDER

The petitioner, who was arrested and remanded to judicial custody on 11.08.2018 for the alleged offences punishable under Sections 8(c) r/w 20(b), 28 and 29 of the NDPS Act in C.C.No.13 of 2019 on the file of the 1st Addl, Special Court for Exclusive Trial of Cases under NDPS Act Cases at Chennai, seeks bail.

2. The case of the prosecution is that the Intelligence Officer received an information on 10.08.2018 at 15.00 hours that a person named Isralei, who is a resident of Maharashtra, has procured around 200 kg of Ganja from Andhra Pradesh and is likely to deliver the same in Chennai. The further information that was received was that Isralei, along with his associates, namely Sheikh Ansar, Sheikh Ahmed and Sushil M Thakare, all residents of Amaravati, will be delivering the ganja in two vehicles, namely a Skoda car and a Maruti Dezire car. The Intelligence Officer also received an information that the accused persons will be crossing Chennai Karanodai Toll Plaza around 18.00 hours on 10.08.2018. Based on this information, the Intelligence Officer sent a report to the Zonal Director, NCB, Chennai and got concurrence to proceed further with necessary action.



Crl.O.P.No.28975 of 2022

WEB COPY

2(i).A team was formed and it reached the Toll Plaza around 17.30 hours along with two independent witnesses at about 18.15 hours. The NCB Officers identified a Skoda car entering into the lane of the Toll Plaza. On enquiry, the person who was driving the vehicle revealed his name as Sheikh Ansar and the person who was sitting besides him revealed his name as Sheikh Ahmed. The NCB Officers also saw a Maruti Dezire car, which was coming behind, and they approached the said car and on enquiry, they found that the person driving the car is Shshil M Thakare (the petitioner herein). On enquiry, he is said to have told the officers that, Isralei came along with him and he left the car saying that he will come back shortly. However, he never returned back. The accused persons are said to have revealed the possession of 200 kgs of dry ganja leaves in 100 square shaped pockets. These were kept in the dicky of the Skoda car. A search was conducted and the entire contraband, weighing about 221.500 kgs was seized. The Skoda car was seized along with other incriminating materials. The Maruti Dezire car, that was driven by the petitioner and which came behind the Skoda car, was also seized. A mahazar was drawn in the presence of independent witnesses and the statement of the accused persons was recorded under Section 67 of NDPS Act.



CrI.O.P.No.28975 of 2022

3.The learned counsel for the petitioner would submit that the only allegation against the petitioner is that he had followed the Skoda car and nothing more. She would further submit that even the contraband was seized only from the Skoda car and the Maruti Dezire car, that was driven by the petitioner, did not contain any contraband. She would further submit that the petitioner has absolutely no connection with A1 and A2 and based on the confession given by A1, the petitioner has been falsely implicated in this case. She would further submit that the petitioner being a car driver, has merely followed the instructions of his owner to drive the car for Isralei and he was driving the car as per the directions given by Isralei and the petitioner has absolutely no knowledge about the contraband that was kept in the skoda car driven by A1 and A2. She would also submit that the petitioner is in judicial custody from 11.08.2018 and hence, she prays for grant of bail to the petitioner.

4.Per contra, the learned Special Public Prosecutor appearing for the respondent apart from the reiterating the facts contained in the counter affidavit filed by the respondent, would submit that there are prima facie materials to show that the petitioner had the knowledge of the contraband



CrI.O.P.No.28975 of 2022

being taken in the skoda car and that the petitioner was very much a part of the team. Hence, he opposed for grant of bail to the petitioner.

5.In reply, the learned counsel for the petitioner would submit that there is no previous case pending against the petitioner and he is in custody for nearly 4 years and till date, without any progress in the trial. She also referred an appeal in CrI.A.No.2027 of 2022 filed before the Hon'ble Supreme Court of India and BLAPL NO.4679 of 2021 filed before the High Court of Orissa, Cuttack.

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

7.Taking into consideration the facts and circumstances of the case and the submissions made by the learned counsel and there is no recovery from the petitioner and there is no previous case pending against him and also considering the period of incarceration undergone by the petitioner and also took note of the fact that 4 years he is in custody without progress in



CrI.O.P.No.28975 of 2022

trial, this Court is inclined to grant bail to the petitioner with certain conditions.

8. Accordingly, 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 sureties, for a like sum to the satisfaction of the **1st Addl, Special Court for Exclusive Trial of Cases under NDPS Act Cases at Chennai**, and on further condition 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 stay at Chennai and report before the Inspector of Police, Esplanade Police Station, daily at 10.30 a.m., for 4 months.

(c) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(d) the petitioner shall not abscond either during investigation or trial;

(e) 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



CrI.O.P.No.28975 of 2022

WEB COPY

by the Hon'ble Supreme Court in *P.K.Shaji Vs. State of Kerala*
[(2005) AIR SCW 5560]; and;

(f)if the accused thereafter absconds, a fresh FIR can
be registered under Section 229-A IPC.

12.12.2022

vkrr

To

- 1.The I Additional Special Court for
Exclusive Trial of Cases Under NDPS Act, Chennai
- 2.The Intelligence Officer,
Narcotics Control Bureau (NCB),
Chennai Zonal Unit, Chennai.
- 3.The Central Prison, Puzhal,
Chennai.
4. The Public Prosecutor,
High Court of Madras.



WEB COPY



CrI.O.P.No.28975 of 2022

T.V.THAMILSELVI,J.

vk

CrI.O.P.No.28975 of 2022

12.12.2022