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CrI.OP.No.2621 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM

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

CrI.OP.No.2621 of 2023

Gopal

... Petitioner

Vs.

Union of India,
Represented by its Jr.Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner/4th accused on bail in CC.No.91 of 2020 pending trial on the file of the Court of Learned I Additional Special Judge for NDPS and EC Act cases, Chennai.

For Petitioner : Mr.G.Prabhakaran

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



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ORDER

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The petitioner, who was arrested and remanded to judicial custody on 14.02.2020 for the offence punishable under Sections 8(c) r/w 22(c), 28 and 29 of NDPS Act in NCB.F.No.48/1/03/20-NCB/MDS on the file of the respondent police, seeks bail.

2. The case of the prosecution is that based on specific information, the officers of Narcotics Control Bureau, Chennai Zonal Unit, seized 5.000 kgs of white colour crystal powder believed to be Methamphetamine, which came to be seized at No-12, Vijayanagar, 2nd Street, Valasaravakkam, Chennai 600 087 on 13.02.2020 from the possession of 4 persons i.e. Sivarupan, Alexander, Sujanthan and Gopal who were in possession of the seized contraband were served with summons under Section 67 of NDPS Act, 1985 as amended, respectively to appear before the Jr. Intelligence Officer at the NCB office at Ayappakkam, Chennai on 13.02.2020 at 21.30 hrs for further enquiry, for which they voluntarily accompanied the officer to the NCB Office at Ayapakkam, Chennai. The said Sivarupan, Alexander, Sujanthan and Gopal



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gave their voluntary statement dated 13/14.02.2020 under Section 67 of the NDPS Act, 1985, in which they inter-alia admitted their guilt in the procurement, possession and thus entering into criminal conspiracy for the illicit trafficking 5.000 kgs of Methamphetamine, which came to be seized at No.12, Vijayanagar, 2nd Street, Valasaravakkam, Chennai 600087 on 13.02.2020.

2.1 Based on incriminating documents and material objects seized on 13.02.2020 and their voluntary confessional statements under Section 67 of NDPS dated 13/14.02.2020, the four persons namely Sivarupan, Alexander, Sujanthan and Gopal who committed offences under Section 8(c) r/w Section 22(c), 28 & 29 of the NDPS Act, 1985 as amended and punishable under Section 22(C), 28, 29 of the same Act. Hence, Sivarupan, Alexander, Sujanthan, Gopal were placed under arrested on 14.02.2020 at 16.30 hrs, 17.00 hrs, 17.30 hrs and 18.00 hrs respectively under the Sections of the NDPS Act. The said accused were produced before the Court, Ambattur and further remanded in judicial custody. The chemical analysis report also received from



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Custom House Lab, Chennai that the material seized is Methamphetamine.

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3. The learned counsel appearing for the petitioner would submit that though the secret information was received on 13.02.2020 and the petitioner and others were found in possession of the alleged contraband, the summons were issued only on 14.02.2020 and they were arrested and remanded to judicial custody. If at all the petitioner and others were in possession of the alleged contraband, the respondent would have recorded the statement on the same day and arrested them. Therefore, there was no joint possession of the alleged contraband. According to the case of the prosecution, 5kg of methamphetamine were seized from all the accused persons. The alleged contraband came to be seized by a search of house at No.12, Vijayanagar, 2nd Street, Valasaravakkam, Chennai on 13.02.2020. The house where from the contraband seized neither belongs to the petitioner and he has no nexus at all with the said place. Admittedly, it belongs to one mahazar witness and according to him, it was leased out to the first accused for ten days. No prudent man would provide a house for ten days that too, without any acquaintance with



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the persons. It is unbelievable story and even in the light of the said mahazar witness, one, Ramesan under Section 67 of NDPS Act. That apart, the petitioner has been impleaded as an accused only from the statement recorded from the other accused persons. Therefore, in order to connect the petitioner with the other accused persons, there is absolutely no material produced by the prosecution. The respondent after completion of investigation, filed final report in the year 2020 itself. From the year 2020, no trial has begun so far by the prosecution. He is incarcerating imprisonment from the date of his arrest i.e. 14.02.2020. The prolonged delay in commencing trial would cause serious prejudice to the petitioner.

4. Mr.N.P.Kumar, the learned Special Public Prosecutor appearing for the respondent would submit that the petitioner along with other three accused persons were in conscious possession of contraband weighing 5 kg of methamphetamine based on the incriminating documents and material objects seized on 13.02.2020 and their voluntary confession statement under Section 67 of NDPS Act was recorded on 13 and 14 of February 2020. The contraband was



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seized in the presence of independent witnesses. Due to Covid 19 pandemic circumstances, the trial court could not able to begin trial. Though the petitioner is present before the trial court, the counsel appearing for the petitioner did not even present and as such, the trial is prolonged only by the accused. The contraband seized from the petitioner and others is commercial quantity and there is a bar under Section 37 of NDPS Act. The petitioner has to satisfy the twin conditions contemplated under Section 37 of NDPS Act. Admittedly, the petitioner had failed to satisfy the twin conditions contemplated under Section 37 of NDPS Act. Therefore, there is absolutely no change of circumstances and prayed for dismissal of the bail petition.

5. Heard, the learned counsel for the petitioner and the learned Special Public Prosecutor appearing for the respondent.

6. There are totally four accused, in which the petitioner is arrayed as fourth accused. On secret information on 13.02.2020, the house in which petitioner and others stayed, search was made and the contraband weighing 5



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kg methamphetamine was seized from the house under the seizure mahazar.

The alleged house is not owned by the petitioner or other accused persons. It is owned by one of the mahazar witnesses. His statement was recorded under Section 67 of NDPS Act. According to him, the said house was rented out to the accused persons for ten days. According to the case of the prosecution, the petitioner along with others were in joint possession of the alleged contraband weighing 5 kg. The secret information also does not whisper about the involvement of the petitioner in the alleged procurement and trafficking of the contraband. Therefore, the petitioner has been roped on the confession statement recorded under Section 67 of NDPS Act of the other co-accused persons. It is settled law that as per the judgment rendered by the Hon'ble Supreme Court of India in the case of ***Tofan Singh Vs. State of Tamilnadu***, in which it is held that the confessional statements of the co-accused allegedly made under Section 67 of the NDPS Act would not constitute incriminating evidence. The telephonic communications by *ipso facto* without revealment as to the text of the communication cannot form basis even for constituting an incriminating circumstances. That apart, after completion of investigation, the



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respondent filed final report and the same has been taken cognizance in CC.No.91 of 2020 on the file of the learned I Additional Special Judge for NDPS and EC Act Cases, Chennai. Even till today, the trial court failed to begin trial so far. The petitioner is incarcerating imprisonment from the date of his arrest i.e. 14.02.2020. In this regard, the High Court of Calcutta, citing the judgment of the Hon'ble Supreme Court India, has held in the case of ***Ashok Shil @ Arun Vs. State of West Bengal*** in CRM(NDPS) 248 of 2022 dated 10.03.2022 as follows:

9. In Legal Aid Committee (supra) Hon'ble Apex Court before formulating directions, observed as follows:

" 21.Of Course, Some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by [Article 21](#) would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualized by [Article 21](#), which has to be telescoped with the right guaranteed by [Article 14](#) which also promises justness,



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fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned Counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned Counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:....."

10. But, in view of the observation of the Hon'ble Apex Court, it is axiomatic that the right of an under trial guaranteed under [Article 21](#) of the Constitution of India cannot be ignored where prosecution is the sole author of delay.

Therefore, the prolonged trial would cause serious prejudice to the petitioner.



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There is absolutely no reason for prolonged trial by the respondent herein. The prosecution did not even examine any single witness and now the case is posted for prosecution witnesses.

7. Considering the above facts and circumstances of the case and also period of incarceration undergone by the petitioner from the date of his arrest viz., 14.02.2020 and also non commencement of trial, this Court is inclined to grant bail to the petitioner.

8. Accordingly, the petitioner shall donate a sum of Rs.50,000/- (Rupees Fifty 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 donation, 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 related sureties, each for a like sum to the satisfaction of the learned I Additional Special Judge for NDPS and EC Act cases, Chennai



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and on further conditions that:

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[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 donate a sum of Rs.50,000/- (Rupees Fifty 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

[c] the petitioner shall report before the trial Court i.e. learned I Additional Special Judge for NDPS and EC Act cases, Chennai daily at 10.30 a.m. and 05.30 p.m. until further orders.

[d] the petitioner shall not abscond either during investigation or trial.

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[g] 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]**.

[h] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.



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To

- 1.The learned I Additional Special Judge
for NDPS and EC Act cases,
Chennai.
- 2.Jr.Intelligence Officer,
Union of India,
Narcotics Control Bureau,
Chennai Zonal Unit, Chennai
- 3.The Pulal Prison,
Chennai
- 4.The Public Prosecutor,
High Court of Madras
Chennai.



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G.K.ILANTHIRAIYAN, J.

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