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CrI.O.P.No.4496 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

CrI.O.P.No.4496 of 2023

Prakash

... Petitioner

Vs.

State rep. by,
The Inspector of Police,
E-2 Royapettah Police Station,
Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the accused/petitioner on bail pending trial in C.C.No.190
of 2021 on the file of the learned II Additional Special Judge for NDPS Act,
Chennai.

For Petitioner : Ms.M.Roselet Helen

For Respondent : Mr. C.E.Pratap
Government Advocate (CrI. Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody
on 16.10.2020, for the offences punishable under Sections 8(c) r/w
20(b)(ii)(C), (25) & 29(1) of NDPS Act, in Crime No.1616 of 2020, on the
file of the respondent police, seeks bail.



2. The case of the prosecution is that on 15.10.2020, the petitioner along with 4 other accused was found to be in possession of 148 kgs. of Ganja at Karanodai Toll Plaza. Hence, the case.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and a false case has been foisted against him. She further submitted that the petitioner was arrested on 16.10.2020 and he is in judicial custody for more than 2 ½ years. Further, the petitioner has been suffering from a terminal illness viz., Papillary Carcinoma of Thyroid (cancer in the throat) and if immediate treatment is not given to the petitioner, there is every possibility of the Cancer being spread which would endanger the life of the petitioner. Therefore, the application for bail has been filed only on health and humanitarian grounds. She further submitted that as per the prosecution version, the contraband alleged to have been recovered from the petitioner is 23 kgs. which is a commercial quantity and though there is a bar under Section 37 of NDPS Act for grant bail to the petitioner on merits, such bar does not curtail the powers conferred upon the High Court for grant of bail under Section 439 Cr.P.C. on humanitarian grounds like health and medical grounds. She would further submit that the co-accused in this case namely



Subbu @ Subramani who has been arrayed as A4 and from whom 33 kgs. of Ganja alleged to have been recovered, has been granted bail by this Court in Crl.O.P.No.7510 of 2021 by order dated 30.04.2021. Hence, he prayed for grant of bail to the petitioner.

4. The respondent police has filed a detailed counter in which the specific overt act of the accused is mentioned as follows;

<i>S.No.</i>	<i>Accused</i>	<i>Contraband</i>	<i>Commercial/ non commercial</i>	<i>NDPS Schedule No.</i>	<i>Chemical report</i>
1	A-1 Prakash	23 kgs. ganja	commercial	55	obtained on 07.12.2020
2	A2 Francis				
3	A3 Ranganathan	30 kgs. ganja	commercial	55	obtained on 07.12.2020
4	A4 Subbu @ Subramani				
5	A5 Balaji	30 kgs. ganja	commercial	55	obtained on 07.12.2020
6	A5 Balaji	95 kgs. ganja	commercial	55	obtained on 07.12.2020

5. The learned Government Advocate (Criminal Side) for the respondent would submit that the petitioner along with other accused was found to be in possession of commercial quantity of ganja and from the petitioner, 23 kgs. of Ganja, which is also a commercial quantity, was recovered and the total contraband seized from all the accused is 148 kgs.

and therefore, there is a bar under Section 37 of NDPS Act for grant of bail to



the petitioner. However, he would fairly concede that such bar does not curtail the powers of the High Court to grant bail to the accused under Section 439 of Cr.P.C. on health and humanitarian grounds. He would further submit that this Court had also called for the medical report of the petitioner and it is filed today.

6. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl. Side) and perused the materials available including the FIR, Medical Report and the counter filed by the respondent police.

7. The medical report of the Tamil Nadu Medical Services Corporation in CT Scan Neck - Plain Contrast dated 28.11.2022, is extracted hereunder:-

"Impression:

K/C/O Papillary Carcinoma of Thyroid,

*Right lobe of thyroid appears enlarged
with Well defined heterogeneously enhancing
hypodense lesion with multiple foci of
calcifications"*

Further, the Senior Consultant, Institute of Nuclear Imaging &

Molecular Medicine, Tamil Nadu Government Multi Super Speciality



Hospital, Omandurar Government Estate Chennai by a letter dated 06.04.2023, stated as follows:-

"I am to submit that the petitioner Thiru. Prakash (aged 57 years) was referred for Overt Hypothyroidism as a consequence of previous surgery for removal of his Thyroid gland by the Endocrine Surgeons. The facility and expertise for treatment of the above condition can be treated by any Endocrinologist, available in any government hospital.

In case, the Endocrinologist believes, that Nuclear Medicine treatment is required because of extensive spread of disease, patients are referred to the Tamil Nadu Government Multi Super Speciality Hospital, Omandurar Government Estate, Chennai, for treatment with Radioactive Iodine. This procedure involves admission of such patients into a specialised Isolation ward for about twenty four to forty eight hours. No one can be permitted to be with the patients during this period for the potential risk of radiation hazard as per the regulatory norms of competent authorities (Atomic Energy Regulatory Board)."

8. In view of the above, the petitioner is stated to have been suffering from Papillary Carcinoma of Thyroid. Thereby, in the opinion of the court, if proper treatment at the earlier stage is not given to the petitioner, there would be possibility of cancer being spread to other parts of the body



which would endanger the life of the petitioner and the petitioner is facing serious health risk. As rightly pointed out that though there is a bar under Section 37 of NDPS Act for grant of bail to the petitioner since the quantity of Ganja alleged to have been recovered from the petitioner is a commercial quantity, it does not curtail the powers conferred upon the High Court for grant of bail under Section 439 Cr.P.C. on health and humanitarian grounds. Therefore, this Court is inclined to grant of bail to the petitioner on medical grounds with certain conditions.

9. Accordingly, 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 sureties** (out of which one surety should be a blood related surety), each for a like sum to the satisfaction of the **learned II Additional Special Judge for 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 report before the trial Court at 10.30 a.m. on all working days for a period of one week and thereafter, on the dates fixed the by trial



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Court;

[c] the petitioner shall not abscond during trial;

[d] the petitioner shall not tamper with evidence or witness during 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 by the Hon'ble Supreme Court in *P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]*;

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

26.04.2023

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To

1. The II Additional Special Judge,
Special Court for NDPS Act cases,
Chennai.
2. The Inspector of Police
E-2 Royapettah Police Station
Chennai.
3. The Superintendent,
Central Prison for men,
Puzhal.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.,

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