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Crl.O.P.No.4592 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2023

CORAM

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

Crl.O.P.No.4592 of 2023

Abdul Karim

... Petitioner

Vs.

Union of India rep by,
Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai – 77.

NCB.F.No.48/1/05/2018-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.88 of 2018 on the file of
the I Additional Special Court for Exclusive Trial of Cases under NDPS Act,
Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr. Rajendra Kumar
Special Public Prosecutor



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 23.03.2018 for the offences punishable under Sections 8(c) read with Section 22(c), 28 and 29 of NDPS Act in NCB.F.No.48/1/05/2018-NCB/MDS on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the respondent police had received a reliable information on 22.03.2018 that two persons namely Sadiq Basha/A3 and Abdul Karim/A2/petitioner herein, who are residents of Nethaji Nagar, Tondiarpet are indulging in trafficking of Ketamine and they had also received an information that the above said accused had handed over the raw materials to one Balamurugan/A1 for manufacturing of Katamine illegally and that they have intended to receive the contraband from A1/Balamurugan on the particular day near Rohini Theatre Bus Stop, Koyambedu. Based on the information, while the Officers of NCB were on surveillance, the said Sadiq Basha/A3 and Abdul Karim/A2 had approached A1/Balamurugan and received one bag each from A1/Balamurugan during which, the Officers of NCB attempted to apprehend them. At that time, the said Sadiq Basha/A3 left his bag and ran away from the scene of occurrence.



However, the NCB team arrested A1/Balamurugan and A2/Abdul Karim/petitioner herein along with the contraband of Ketamine weighing 14.650. Hence, the case.

3. The learned counsel for the petitioner would submit that based on a specific information, the respondent police is alleged to have kept a watch over Sadiq Basha/A3 and Abdul Karim/A2/petitioner herein when they were about to receive the contraband from A1/Balamurugan and when they attempted to apprehend the accused, A1/Balamurugan and A2/Abdul Karim/petitioner herein were arrested along with the contraband and the said Sadiq Basha /A3 ran away from the scene of occurrence. Later the said Sadiq Basha was also arrested and after completion of investigation, the respondent filed the final report and the case has also been taken up for trial in C.C.No.88 of 2018. He further submitted that the said Sadiq Basha had earlier filed an application for bail before this Court in Crl.O.P.No.6307 of 2022 and the same was dismissed by this Court by order dated 28.06.2022. Subsequently, against the order of dismissal, the said Sadiq Basha/A3 preferred SLP No.8669 of 2022 and the Hon'ble Apex Court, by taking into consideration that the accused is in judicial custody for more than 4 years 8 months and though the trial is under progress and finding it is not likely to



conclude immediately, had granted bail to him on 10.01.2023. He further submitted that even as per the prosecution, the allegation against the petitioner and the said Sadiq Basha/A3 are similar in nature that they had handed over the raw materials to A1/Balamurugan and on that particular day, they had come to the scene of occurrence to receive the finished product from A1/Balamurugan. He would also submit that the petitioner is in judicial custody for more than 5 years and after February 2023 i.e. after examination of P.W.6, there is no progress in the trial and the petitioner being similarly placed as that of Sadiq Basha/A3 is entitled to be released on bail on parity and thereby, he would seek for bail.

4. The learned Special Public Prosecutor for NCB, vehemently opposed for grant of bail to the petitioner stating that it is a case where recovery of commercial quantity of 14.650 kgs. of Ketamine of Psychotropic Substance covered under NDPS Act has been recovered. He further submitted that most of the witnesses have been examined and only 2 more witnesses are yet to be examined and the case stands posted on 19.06.2023 for examination of P.W.7 and P.W.8. However, he would submit that on verification it was found that the petitioner has got permanent address.



5. At this juncture, the learned counsel for the petitioner would submit that the petitioner has been suffering from Heart ailments and admitted in Stanley Hospital and he is ready to produce adequate security for his release on bail and that the petitioner undertakes to appear before the trial Court on all hearing dates without fail.

6. Heard the learned Counsel for the petitioner and the learned Special Public Prosecutor for NCB, and perused the materials available on record including the FIR and counter.

7. It is seen that this Court by an order dated 28.06.2023 in Crl.O.P.No.6307 of 2022, had dismissed the bail application filed by A3/Mohammed Sadiq Basha and that the petitioner is also similarly placed as that of the said Mohammed Sadiq Basha/A3. Subsequently, the said Mohammed Sadiq Basha/A3 had preferred SLP No.8669 of 2022 seeking bail and the Hon'ble Apex Court, taking into consideration the long period of incarceration and also finding that though the trial is under progress and it is not likely to conclude immediately, had granted bail to him by order dated 10.01.2023. Now it is also reported by the learned Special Public Prosecutor for NCB that there is only one Judge who is manning 3 Courts.



8. Considering the above facts and circumstances of the case and the submissions made by the learned counsel on either side, this Court is of the opinion that the trial is not likely to conclude immediately. Further, the petitioner is entitled for bail on the ground of parity and that the petitioner has been in judicial custody for 5 years. Hence, this Court is inclined to grant of bail to the petitioner with certain conditions.

9. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.50,000/- (Rupees Fifty Thousand Only)** with **two sureties** each for a like sum to the satisfaction of the **learned I Additional Special Court for Exclusive Trial of Cases 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;



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[b] the petitioner shall report before the trial Court on all hearing dates without fail. After coming out on bail, the petitioner shall also file an affidavit of undertaking before the trial Court that he will co-operate for the speedy disposal of trial by cross examining the witnesses on the same day of their examination in chief.

[c] the petitioner shall not abscond either during investigation or trial;

[d] the petitioner shall not tamper with evidence or witness 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 petitioners 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.

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To
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1. I Additional Special Court for Exclusive Trial of Cases
under NDPS Act, Chennai,
2. Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai – 77.
3. The Central Prison,
Puzhal.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.,

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