



Crl.O.P.No.5908 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2023

CORAM

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

Crl.O.P.No.5908 of 2023

C.Ganapath

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
N-2, Kasimedu Police Station,
Chennai - 600 013.

(Crime No.52 of 2023).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner/accused on bail, in connection with the
Crime No.52 of 2023, pending investigation on the file of the respondent
Police.

For Petitioner : Mr.K.Kalaivanan

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



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 12.02.2023, for the offences punishable under Sections 8(c), 22(c) & 25 of Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.52 of 2023, on the file of the respondent Police, seeks bail.

2. The case of the prosecution is that on 12.02.2023, at about 05.20 hours, on receipt of a secret information about illegal transportation of narcotic substances at Kasimedu Power Kuppam Subway, the respondent and his team had conducted a search, during which, they found that the accused 1 & 2 were in illegal possession of 1 Kilogram of Methaqualone. The respondent Police has arrested the accused and seized the contraband from A1 under the cover of seizure mahazar and recorded their confession statements in the presence of witnesses.

3. Learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has been falsely implicated in this case. He further submitted that absolutely there is no connection between the



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petitioner (A2) and A1. He also submitted that the contraband is stated to have been recovered from A1 alone, however, the prosecution has fabricated the case and the petitioner was illegally arrested from his shop on 11.02.2023 and later, strangely, he being a Jain by community was shown to be arrested along with A1 on the very next day near Kasimedu Fish Market, as if he and A1 were waiting for the customers to sell the contraband at the fish market. He also submitted that the petitioner understands that the report has been received from the Department of Forensic Sciences recently, wherein, it is stated that the alleged contraband stated to have been recovered from the first accused is nothing but Diphenhydramine, which is an antihistamine drug with sedative properties and it falls under Schedule-G, for which action can be taken only under Drugs and Cosmetics Act and Rule and not under NDPS Act. He also submitted that the petitioner is ready to abide by any stringent conditions that may be imposed by this Court. Therefore, he prayed for grant of bail to the petitioner.

4. The respondent Police has filed a detailed counter and produced the Forensic Examination Report.



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5. Learned Government Advocate (Crl.Side) appearing for the respondent Police submitted that based on the information received, the respondent had conducted a search, during which, they found that the petitioner (A2) along with A1 was indulging in the illegal business of drugs near Kasimedu Fish Market and therefore, the respondent had arrested them and seized the 1 Kilogram of contraband from A1, which at that time was stated to be Methaqualone. However, he submitted that the lab report has been received from the Department of Forensic Sciences, which states that the contraband recovered from the accused is Diphenhydramine, which is an antihistamine drug with sedative properties, falling under Schedule-G and not a Narcotic substance. However, he opposed for grant of bail to the petitioner.

6. Heard the learned Counsel for the Petitioner and the learned Government Advocate (Crl.Side) for the respondent Police and perused the materials available on record including the lab report of the Department of Forensic Sciences.



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7. In view of the above, this Court is of the opinion that though the alleged contraband recovered is stated as Methaqualone, the lab report reveals that the contraband is Diphenhydramine, which is an antihistamine drug with sedative properties, falls under Schedule-G of Drugs and Cosmetics Act and not a Narcotic substance. Further, the accused is in custody for more than 100 days.

8. Taking into consideration the above facts and circumstances of the case, the submissions made by the learned counsel on either side and also considering the period of incarceration undergone by the petitioner, this Court is inclined to grant 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.10,000/- (Rupees Ten thousand only)** with **two sureties**, each for a like sum to the satisfaction of the **learned XVI Metropolitan Magistrate, George Town, 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



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Bank pass Book to ensure their identity;

[b] the petitioner shall report before the respondent Police, as and when required;

[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 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.

22.06.2023

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To

1. The XVI Metropolitan Magistrate,
George Town,
Chennai.
2. The Inspector of Police,
N-2, Kasimedu Police Station,
Chennai - 600 013.
3. The Central Prison,
Puzhal - II,
Chennai.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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