



Crl.O.P.No.6938 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

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

Crl.O.P.No.6938 of 2023

Jijo George

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
NIBCID, Coimbatore,
Coimbatore District.
(Crime No.22 of 2022).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleased to enlarge the petitioner/accused on bail pending trial in C.C.No.60
of 2022 on the file of the Special Court for Essential Commodities Act
Cases, Coimbatore.

For Petitioner : Mr.A.M.Rahamath Ali

For Respondent : Mr.C.E.Pratap
Government Advocete (Crl.side)



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 12.09.2022 for the offences punishable under Section 8(c), 20(b)(ii)(C), 25 and 29(1) of the NDPS Act, in Crime No.22 of 2022, on the file of the respondent Police, seeks bail.

2.The case of the prosecution is that on 04.02.2022 at about 12.15 p.m, the complainant, based on the secret information that ganja was being transported from Andhra Pradesh to Kerala, while he was on duty at the Valayar check-post and on trying to intercept the Ashok Leyland mini lorry, the driver took U-turn, avoiding the interception and drove the lorry towards Tamil Nadu. The same lorry was caught in Velampalayam Police Station of Tirupur City using tower location of the accused. On subsequent search, the accused was identified by the informer and the accused A1 and A2 were found to be in possession of 88 packets each containing 2kgs of ganja totalling 176 kgs of ganja. The arrested accused made a statement that there were two more accused and the petitioner herein and another accused escaped in a car which they were travelling. The respondent police has seized the entire contraband from A1 and A2 and the case was registered



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against the petitioners and they were remanded to judicial custody. Further it was alleged that the FIR was registered and on completion of investigation, charge sheet was filed in which, the petitioner A3 and A4 Nikil were shown as absconding accused. The petitioner/A3 was arrested on 12.09.2022 and remanded to judicial custody while A4 is yet to be identified/arrested. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that the petitioner was arrested on 12.09.2022 and remanded to judicial custody on the same day. He further submit that the petitioner was not arrested during investigation and he was shown as an absconding accused in the final report and only thereafter he was arrested. It is also his case, that on reading of the entire final report it is seen that there is absolutely no material to connect the petitioner with the crime other than the confession statement recorded from A1/Sivaraman and, if the confession of A1/Sivaraman had been true, the respondent would have taken steps to get the CCTV footage from the various toll-gates through which the petitioner would have travelled along with A1's lorry. Apart from that no other



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material including electronic evidence has been collected by the respondent police to show that the petitioner was in constant touch with the main accused when he had travelled all the way from Andhra Pradesh through Tamil Nadu to Kerala. Only based on the confession, this petitioner has been implicated in this case and there is no recovery as against the petitioner and that the petitioner has no previous case registered against him either under the IPC offences or under the NDPS Act and thereby he would submit that the petitioner has satisfied the conditions required under Section 37 of NDPS Act. He further submitted that the respondent police have also not identified A4. However, he would further submit that other than the confession there is no other material to connect the petitioner with A1 and the contraband. Hence, he seeks for grant of bail to the petitioner.

4. The respondent has filed a detailed counter.

5. The learned Government Advocate (crl.side) for the respondent would submit that the petitioner is a person who has introduced A1 into the trade. As per the confession of A1, the petitioner is the person who has taken Sivaraman to Andhra Pradesh where he had purchased 176 kgs of



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ganja and they were packed into 88 packets of 2 kgs each and they were transported in the lorry driven by A1. A1 was arrested within the jurisdiction of the respondent police station and the petitioner, who has followed A1's lorry in a wagon car has absconded from the scene of occurrence. Based on the confession recorded from A1, the petitioner was added as A3 in this case and the final report was filed and the petitioner was arrested on 12.09.2022. He further submit that the case now stands posted to 05.04.2023. Also according to him, during the course of investigation, the materials were produced before the Additional District Judge / Presiding Officer, Special Court for Essential Commodities Act, Cases, Coimbatore in PR.No.78 of 2022 on 14.02.2022 and subsequently the case was transferred from Tirupur city Velampalayam to NIBCID on 26.03.2022 with a new Crime Number 22 of 2022 and further investigation was taken up and witnesses were also examined. 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) and perused the materials available on record.



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7. It is a case of seizure of 176 kgs of ganja, which is a commercial quantity. As per the case of the prosecution, the petitioner is stated to have introduced A1 to the ganja traders in Andhra Pradesh and it is also the further case of the prosecution that the petitioner has escorted the lorry driven by A1 from Andhra Pradesh to Kerala in a Wagon R car and entered into Tamil Nadu. The respondent has not seized any material either from the toll-gates or any electronic evidence from the mobile towers to show that the petitioner has travelled along with and escorted A1 from whom the contraband has been recovered. Further it is also stated that the petitioner has no previous case pending against him.

8. Taking into consideration the facts that apart from the confession recorded from A1, there is no material to connect the petitioner, and that this Court is of the opinion that the petitioner has satisfied the condition required under Section 37 of NDPS, for grant of bail and thereby 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.15,000/- (Rupees Fifteen thousand**



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only) with two sureties out of which, one surety must be a blood relative surety, for a like sum to the satisfaction of the learned Special Court for Essential Commodities Act Cases, Coimbatore 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 shall report before the learned Trial Court on all working days at 10.30 a.m, for a period of two weeks and thereafter on the dates fixed by the learned Trial Judge;

[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]*;



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

28.03.2023

drl

To

1. The Special Court for Essential Commodities
Act Cases, Coimbatore.
2. The Inspector of Police,
NIBCID, Coimbatore,
Coimbatore District.
3. The Superintendent,
Central Prison, Kannur,
Kerala
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

drl

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