



CrI.O.P.No.7541 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	10.07.2023
Pronounced on	:	17.07.2023

CORAM:

THE HON'BLE MR. JUSTICE **G.CHANDRASEKHARAN**

CrI.O.P.No.7541 of 2023

Vishwalal

... Petitioner

/versus/

State by:
The Intelligence Officer
NCB, Chennai

... Respondent

Prayer: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code, praying to enlarge the petitioner on bail in R.R.No.32 of 2022 in NCB.F.No.48/1/09/2022-NCB/MDS

For petitioner : Mr.M.S.Charles

For Respondent : Mr.S.Rajendrakumar
Special Public Prosecutor for NCB Cases



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ORDER

The petitioner who was arrested and remanded to judicial custody on 03.09.2022, for the offences punishable under Sections 8(c) read with 20(b)(ii)(c), 28 and 29 of NDPS Act, registered in R.R.No.32 of 2022 in NCB.F.No.48/1/09/2022-NCB/MDS, on the file of the respondent police, seeks bail.

2.Mr.M.S.Charles, learned counsel for the petitioner submitted that, this petitioner is implicated as an accused in R.R.No.32 of 2022, only on the basis of the confession statement of co-accused. There is no recovery of any contraband from the petitioner and there is also no other incriminating material available against the petitioner justifying his inclusion in this case. Petitioner is in judicial custody from 03.09.2022 and thus, this petition is filed seeking to release the petitioner on bail.

3. In response, Mr.S.Rajendrakumar, learned Special Public Prosecutor for NCB Cases, submitted that the NCB Chennai, has seized 65.540 gs. of Ganja from a broke down and stationary condition Toyota



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Etios car, bearing Registration No.KL-01-BN-5222 in Chennai to Vandalur bypass road, near Red Hills, on 24.07.2022. The learned Special Public Prosecutor further submitted that, the petitioner was arrested in connection with financing, for procurement of Ganja. There are cell phone call details, made between the accused, to show that they conspired together in procuring the Ganja. In support of his submission, the cell phone call details, made between (1) Vishnu with Viswa Lal/petitioner, (2)Viswa Lal/petitioner with Abhiram and (3) Viswa Lal/petitioner with Midhun, are produced.

4. In reply to the aforesaid submissions, the learned counsel for the petitioner submitted that, even assuming that there were cellphone conversations between the petitioner and other accused, the alleged conversations had taken place much prior to the seizure of the aforesaid contraband. There is no nexus for implicating the petitioner with this offence, on the basis of these call details. The only evidence that the respondent relies against the petitioner is that, the confession statement of co-accused and the statement of the petitioner recorded under Section 67 of NDPS Act. As per the decision of the Hon'ble Supreme Court *in*



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Tofan Singh Vs. State of Tamil Nadu, reported in ***(2021) 4 SCC 1***,

confession statement recorded under Section 67 of NDPS Act, is inadmissible. The said ratio is reiterated by the Hon'ble Supreme Court in ***State By (Ncb) Bengaluru Vs. Pallulabid Ahmad Arimutta & Another***, reported in ***CDJ 2022 SC 080***. The learned counsel for the petitioner pressed for the release of the petitioner.

5. Considered the rival submissions and perused the records.

6. The case of the complainant in brief is that, on 23.07.2022, Mr.M.P.Narendran, Junior Intelligence Officer, received an information over NCB office phone from a reliable source that, one Vishnu V., along with his associates Vipin Raj and Midhun, have procured around 60 Kgs. of Ganja in Andhra Pradesh and they will be crossing Karanodai Toll Plaza, Chennai, at around 03.00 hrs. on 24.07.2022. Mr.M.P.Narendran, put up this information report to the Superintendent for further orders. The Superintendent gave authorization to Mr.M.P.Narendran. Accordingly, Mr.M.P.Narendran, along with his team, visited the spot. They made arrangements for independent



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witnesses namely, Mani D and one Baskar, after informing the purpose.

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At about 04.25 hrs., a white colour Toyota Etios car bearing Registration No.KL-01-BN-5222, came in rash manner and it was occupied by 3 persons. When Mr.M.P.Narendran along with his team approached the car and tried to introduced himself to the driver of the car, the driver suddenly took the car in reverse direction and then, came forward and hit a mini pick up truck vehicle bearing Registration No.TN-20-AP-7132 and escaped. Despite the efforts made to chase the vehicle, they could not catch the car bearing Registration No.KL-01-BN-5222. Later, they found the said car near Red Hills in a broke down and stationary condition. On search, 32 nos. of Ganja packets were seized which weighed 65.540 kgs. Subsequently, the accused Vishnu and Vipinraj were arrested. The allegation against this petitioner is that, he along with other accused namely Abhiram financed for the procurement of Ganja.

7. As per records produced before this Court, there is no doubt that, the petitioner was implicated as an accused in this case on the basis of the confession statement of co-accused and the statement of the petitioner recorded under Section 67 of NDPS Act. As rightly pointed



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out by the learned counsel for the petitioner, statement of an accused recorded under Section 67 of NDPS Act is inadmissible as per the decision of the Hon'ble Supreme Court *in Tofan Singh Vs. State of Tamil Nadu* reported *in (2021) 4 SCC 1*, which is also reiterated in *State By (Ncb) Bengaluru Vs. Pallulabid Ahmad Arimutta & Another*, reported *in CDJ 2022 SC 080*.

8. The respondent, relies on certain cell phone conversations, between the petitioner and the co-accused as a piece of evidence to implicate the petitioner as an accused in this case. Ganja was procured by the other accused in Andhra Pradesh some time before 23.07.2022. Though the call detail particulars given in the counter show that, the petitioner had cell phone conversation with the accused namely Vishnu, Abhiram and Midhun, these calls were made some time in March, April, May, June and early part of July 2022. Merely because some cell phone conversations were made among the accused, it is not a sufficient ground to make a legal presumption that, the accused had involved in the conspiracy to procure Ganja and its transportation.



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9. This Court finds that the materials produced before this Court till now, do not inspire the confidence of this Court to form an opinion that the petitioner had involved in the procurement of Ganja and there is no clinching material to implicate the petitioner. Thus, there is reasonable ground to believe that, the petitioner is not guilty of this offence. When there is a ground to believe that, petitioner is not guilty of this offence, this Court can also reasonably believe that he is not likely to commit such offence while on bail. Therefore, this Court is of the view that the petitioner is entitled for bail. Hence, this Court is inclined to grant bail to the petitioner.

10. 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**, each for a like sum to the satisfaction of the **Principal Special Court under EC/NDPS Act, Chennai**, 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 report before the respondent police daily at 10.00.a.m., and 05.00 p.m., until further orders.

[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 petitioners 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].



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

11. Accordingly, this Criminal Original Petition is ordered.

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To

1. The Principal Special Court under EC/NDPS Act
Chennai
2. The Intelligence Officer
NCB, Chennai
3. The Central Prison,
Puzhal, Chennai
4. The Public Prosecutor,
High Court, Madras.



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G.CHANDRASEKHARAN. J.

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**Pre-Delivery Order in
Crl.O.P.No.7541 of 2023**

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