



Crl.OP.No.7816 of 2023

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G.K.ILANTHIRAIYAN, J.

The petitioner, who was arrested at the hands of the respondent Police and remanded to judicial custody on 26.06.2022 for the offences punishable under Sections 8(c) r/w 22(c) and 29(1) of NDPS Act, 1985, in Crime No.121 of 2022, seeks bail.

2. The case of the prosecution is that on secret information, the defacto complainant and their team went to the scene of occurrence and conducted an enquiry and found that the petitioner and other accused were in possession of 23 MDMA Ecstasy tablets weighing 11 grams. Hence, the complaint.

3. The learned counsel for the petitioner submitted that the petitioner is an innocent person and he has been falsely implicated in this case. The petitioner was not arrested by the respondent Police in the alleged place of occurrence. According to the case of the prosecution, the petitioner was found in possession of 11 grams of MDMA Ecstasy tablets, coloring blue, cement, rose and brown. Whereas, the weight and the colors of tablets were changed while producing before the Court. That apart, the forensic laboratory report does not find the petitioner's name and the weight also completely differs. He further submitted that the present FIR in Crime No.121 of 2022 was registered at about 20.30 hrs, on 25.06.2022. The defacto complainant had also registered another FIR in Crime No.120 of 2022 under Section 174 Cr.P.C at about 22.30 hrs. Even according to the said Sub Inspector of Police, after recovery and after recording the confession statement from the petitioner, he



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came to the Police Station and registered an FIR at about 00.40 hrs on 26.06.2022. When it was being so, he could not be able to arrest the petitioner and record his confession. In fact, the petitioner's wife also filed a petition for transfer of investigation before this Court in W.P.No.17486 of 2023 and it is pending. This Court recorded the submission made by the petitioner and directed the respondents to file status report. The petitioner also filed a petition under Section 91 Cr.P.C, for production of CCTV footages from the respondent Police Station, B2 Esplanade Police Station, Chennai and H9, Korukkupet Police Station, in which the respondent filed a counter stating that due to heavy rain, the building is not in a good condition and as such the CCTV was not working. He also raised a ground of alibi. Therefore, the entire case of the prosecution is false and the petitioner has been falsely implicated in this case. Hence, he prays for grant of bail to the petitioner.

4. The learned counsel for the petitioner also relied upon the Judgment of Delhi High Court reported in **2005 (82) DRJ 435** in the case of **Mohd Ramzan Vs State (NCT of Delhi)**, in which it was held that “the discrepancies did not so much relate the quantum of seizure but to the seizure itself. It is not just that as in the present case instead of 1800 gms, 1940 gms were sent to the forensic science laboratory. What is important is that such a discrepancy casts reasonable doubts on the credibility of the recovery itself and it is on that basis amongst other grounds, that the Hon'ble Supreme Court of India held in the case of **Rajesh Kagdamba Avasthi** found it unsafe to sustain the conviction of the appellant herein”.



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5. The learned Government Advocate (Crl.side) submitted that on secret information, when the defacto complainant and their team went to the scene of occurrence and conducted an enquiry, it was found that the petitioner and other accused were in possession of 23 MDMA Ecstasy tablets, weighing 11 grams. This is the second bail petition filed by the petitioner. Earlier petition filed by the petitioner was dismissed by this Court on 16.08.2022 in Crl.O.P.No.18521 of 2022. Hence, he vehemently opposed grant of bail to the petitioner.

6. A perusal of records and counter filed by the respondents revealed that during the light, the colours of the contraband reflected differently and as such that discrepancy cannot be the ground for grant of bail. Insofar as the weight of the tablets are concerned, one or two grams may differ and during the enquiry, it was not properly weighed and only while producing the same before the Court, it was properly weighed and there was meagre difference. Further, the petitioner's name does not find place in the Forensic Laboratory Report, is not fatal to the case of the prosecution. Further, the petitioner was already involved in a murder case and he is facing trial. That apart, if the petitioner disputed his arrest by the respondent, he should have very well stated before the remand Court. Therefore, the petitioner failed to state anything before the remand Court about his arrest and place of arrest. That apart, the ground raised by the petitioner can be considered only during the trial by let in evidence.



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7. Therefore, the Judgment cited by the learned counsel for the petitioner is not applicable to the case on hand and the petitioner failed to satisfy the twin conditions as contemplated under Section 37 of NDPS Act. Therefore, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

26.07.2023

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