



WEB COPY



Crl.OP.Nos.7827 & 8876 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.07.2023

Pronounced on : 12.07.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.OP.Nos.7827 & 8876 of 2023

Crl.OP.No.7827 of 2023

A.Kubendran

... Petitioner/A1

Vs.

Union of India,
Through Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai
in R.R.No.37 of 2021

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in connection with CC.No.128 of 2022 pending on the file of the Court of the Special Judge for NDPS Act Cases at Chennai

For Petitioner : Mr.K.Madhu



Crl.OP.Nos.7827 & 8876 of 2023

For Respondent : Mr.S.Rajendra Kumar,
Special Public Prosecutor
for NCB

Crl.OP.No.8876 of 2023

K.Chelladurai @ Periyakaruppan ... Petitioner/A5

Vs.

Union of India,
Rep by its Intelligence Officer,
NCB, Chennai Zonal Unit,
Chennai

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in CC.No.128 of 2022 on the file of II Additional Special Court Exclusive Trial of cases under NDPS Act at Chennai

For Petitioner : Mr.D.Selvam

For Respondent : Mr.S.Rajendra Kumar,
Special Public Prosecutor
for NCB

COMMON ORDER

The petitioner/A1 in Crl.OP.No.7827 of 2023, who was arrested and remanded to judicial custody on 06.12.2021 for the alleged offences punishable under Sections 8(C) read with Section 20(b)(ii)(C),



Crl.OP.Nos.7827 & 8876 of 2023

25, 27A, 28 & 29 punishable under Section 20(b)(ii)(C), 25, 27-A, 28 & 29 of the N.D.P.S.Act, 1985 as amended, in RR.No.37 of 2021 on the file of the respondent, pending trial in C.C.No.128 of 2022 on the file of Court of Special Judge for NDPS Act cases at Chennai, seeks bail. The petitioner/A5 in Crl.OP.No.8876 of 2023, who was arrested and remanded to judicial custody on 09.03.2023 for the alleged offences punishable under Sections 8(c) R/w 20(B)(II)(C), 25, 27A, 28 & 29 of NDPS.Act, 1985, on the file of the respondent, pending trial in C.C.No.128 of 2022 on the file of II Additional Special Court Exclusive Trial of cases under NDPS Act at Chennai, seeks bail.

2. The case of the prosecution is that based on specific information, the officers of Narcotics Control Bureau, Chennai Zonal Unit, seized 642.100 kg of brownish green colour dry leaves and flower tops believed to be Marijuana (ganja) kept in Eicher Truck bearing Reg. No. TN-57-W-0591 at Karanodai Toll plaza, Chennai on 04/05.12.2021 and arrested three persons namely A.Kubendran/A1, aged 35 years S/o Anbazhagan, Balakrishnan.T aged around 44 years S/o Thangamalai



Crl.OP.Nos.7827 & 8876 of 2023

Thevar.S and Ramu.T aged around 50 years S/o Thangavelu for their involvement in trafficking of the seized Ganja under provisions of the NDPS Act, 1985. It has been alleged in this case that the seized Eicher van bearing Registration No.TN-57-W- 0591 belongs to A1. Originally the said vehicle belongs to one Senthilkumar and later one Thangapandi had entered into sale agreement with the said Senthilkumar.

2.1 In the voluntary statement of Senthilkumar, he himself explained that the said vehicle was sold to Thangapandi. Further, in Thangapandi's voluntary statement, he explained that the purchase of vehicle was done by A1 and the initial amount of Rs.2,60,000/- was paid by A1 to Senthil Kumar in presence of Thagapandi and the remaining amount of Rs.10,000/- was directly paid by A1 to Senthil Kumar. A1 collected all the documents related to the vehicle from Senthil Kumar. Senthil Kumar sold the vehicle with cash and he received the money for the same. Thangpandi further stated that he is uneducated and he is doing shepherd work in daily wages and he does n't have any driving license and A1 by knowing his position and innocence, A1 in his voluntary



Crl.OP.Nos.7827 & 8876 of 2023

statement, he clearly mentioned that Thangapandi is his relation and knowing his position, A1 used Thagapandi and purchased the vehicle in the name of Thangapandi. A1 intentionally hid his name to escape from the crime scene.

3. The learned counsel for the petitioner in Crl.OP.No.7827 of 2023 submitted that the petitioner is arrayed as first accused. According to the prosecution, seized eicher van bearing registration No.TN 57 W 0591 belongs to the petitioner. Originally, the said vehicle belongs to one Senthil Kumar and later one Thangapandi entered into an agreement for sale. Under the agreement, the petitioner is neither party nor a signatory. Therefore, the petitioner never owned any vehicle. Only on the confession statement of the said Senthilkumar, the petitioner has been taken into custody and arrayed as accused. In fact, on perusal of the confession statement of Senthilkumar, he did not whisper about the petitioner or his involvement in the purchase of the said vehicle. The alleged contraband was not seized from the petitioner and he is not the relative to any other accused i.e. Thangapandi. He did not



Crl.OP.Nos.7827 & 8876 of 2023

whisper about his relationship with the petitioner. According to the case of the prosecution, three cell phone numbers alleged to be in the petitioner's custody, whereas those phone numbers were not in the name of the petitioner and there is absolutely no evidence to connect the petitioner to the said phone numbers. Further alleged that a huge sum was transferred to the petitioner's bank account from the second accused. But, originally the said amount has been transferred to the petitioner's account from the account of wife of the second accused. Therefore, there is absolutely no evidence to show that the petitioner was in conscious and constructive possession of contraband.

3.1 He further submitted that the petitioner has been roped in to this case only on the confession statement of A3. Subsequently, A3 died even before commencement of trial. Therefore, there is absolutely no chance to prove that the petitioner also involved in this case. Further the petitioner had no previous antecedents and he never involved in any case under NDPS Act. He specifically contended that the confession statement recorded under Section 67 of NDPS Act remain



Crl.OP.Nos.7827 & 8876 of 2023

inadmissible in the trial of offence under NDPS Act as held by the Hon'ble Supreme Court of India repeatedly. Further the statement recorded under Section 67 of NDPS Act cannot form the basis for impleading the petitioner as accused without any other material leading to the confession statement.

3.2 He further submitted that the alleged occurrence had been taken place on 04.12.2021. On that day at about 19.20 hrs, the respondent had caught hold the third accused along with eicher van loaded with contraband weighing 642.100 kg of ganja. Even according to the respondent, only mahazar has been made on the said day i.e. on 04.12.2021. Other records were dated as 05.12.2021. After arresting the third accused, the second accused was arrested. The statement from A2 and A3 were recorded on 05.12.2021. Only on their statement, the petitioner had been implicated as accused on 05.12.2021. But the alleged summons issued to the petitioner was dated 04.12.2021. When the petitioner had been implicated as accused only on 05.12.2021, there is no possibility for the respondent to issue summon to the petitioner even as



Crl.OP.Nos.7827 & 8876 of 2023

early as 04.12.2021. Therefore, it is clearly a put up case and unnecessarily he is incarcerating imprisonment from the date of his arrest. That apart, records dated 04.12.2021 and 05.12.2021 were sent to the court only on 07.12.2021. The mahazar though contended that seizure of contraband and vehicle in presence of Village Administrative Officer one Mr.Karthikeyan and Nethaji Loganathan; Village Administrative Officer Mr.Karthikeyan and Sathish have signed as attesting witnesses. No signature was obtained from Nethaji Loganathan. No individual witness had signed in the mahazar witness. Further the statement of the petitioner was not made or recorded in the presence of witnesses. Admittedly, no recovery of ganja or other incriminating materials connected to this case from the petitioner. Now the respondent filed final report and the same has been taken cognizance in CC.No.128 of 2022 on the file of the Special Judge for NDPS Act Cases, Chennai. There is no positive sign to begin with the trial in the trial court and the prolonged delay even for beginning the trial causes prejudice to the petitioner.



Crl.OP.Nos.7827 & 8876 of 2023

WEB COPY

4. The learned counsel for the petitioner in Crl.OP.No.8876 of 2023 submitted that the petitioner is arrayed as fifth accused and he has been falsely implicated in this case. Admittedly the petitioner was not in possession of any contraband and no recovery was made from the petitioner. Only on the confession statement of the co-accused, the petitioner has been implicated as accused. Except the confession statement, there was no recovery and no material to connect the petitioner along with the other accused persons. Further the statement recorded under Section 67 of NDPS Act is not admissible in evidence and except the said statement, no other materials produced by the prosecution. The petitioner so far not involved in NDPS cases and he has been falsely roped in to this case, that too only based on confession statement of co-accused. Therefore, he sought for bail to the petitioner.

5. Per contra, the respondent filed counter and submitted that though the petitioners were roped into this case on the confession statement of the co-accused, it connects the petitioners that the purchase of vehicle done by the first accused and the initial amount



Crl.OP.Nos.7827 & 8876 of 2023

Rs.2,60,000/- paid by him to Senthilkumar in the presence of Thangapandi and the remaining amount of Rs.10,000/- was directly paid by A1 to Senthil Kumar and he collected all the documents related to the vehicle from the said Senthilkumar. In fact, Senthilkumar sold the vehicle and received cash. The first accused also admitted that he only purchased the vehicle in the name of the Thangapandi with an intention to purchase contraband. The Public Prosecutor also produced records of the call details of the phone numbers 9344557926 and 9047470619 and also its location. He also produced records showing that the amount has been transferred to the account of first accused from the account of the wife of the second accused.

5.1 He further submitted that the first accused had intentionally taken three phones in the name of others to hide his identity for undertaking nefarious activities and evading from the clutches of law. He further submitted that insofar as fifth accused in Crl.OP.No.8876 of 2023, he produced call detail records pertaining to the mobile No.8489858925 controlled by the petitioner and the conversations were



Crl.OP.Nos.7827 & 8876 of 2023

exchanged between the petitioner and other co accused persons. That apart, he was arrested only on 08.03.2023, that too on execution of NBW and produced before the II Additional Special Court under NDPS Act, Chennai. All the accused persons were in possession of conscious and constructive possession of ganja weighing 642.100 kg and it is a commercial quantity. Therefore, he prayed for dismissal of both the petitions.

6. Heard, the learned counsel appearing on either side.

7. There are totally six accused, in which the petitioner is arrayed as A1 and A5. Both the accused were implicated on the confession statement of the co accused. Except the confession statement, the respondent also produced call detail records between the accused persons. Admittedly, the phone numbers produced by the respondent not stand in the name of the petitioners. The first accused was arrested and remanded to judicial custody on 06.12.2021. The fifth accused was arrested and remanded to judicial custody on 08.03.2023. On perusal of



Crl.OP.Nos.7827 & 8876 of 2023

records, revealed that both the petitioners were implicated only based on the confession statement of co accused i.e. A2 and A3. On 04.12.2021, on receipt of information from the reliable sources that the second accused along with other accused had procured around 650 kg ganja from Andhra Pradesh and he is likely to deliver the same in Trichy. They will be transporting ganja via Chennai in eicher truck bearing registration No.TN 57 W 0591. After receipt of authorisation to search the said vehicle, along with two witnesses, the respondent team mounted surveillance at Karanodai Toll Plaza, Chennai. At around 19.20 hrs, the respondent team identified the eicher truck bearing registration No.TN 57 W 0591, which was about to reach Karanodai Toll Plaza. It was occupied by one driver and later identified him as one i.e. third accused T.Ramu. Further he deposed that the second accused went to Trichy by bus and directed him to meet him at Trichy.

8. On permission, the respondent prepared summon in the name of second accused. In the meantime, seized contraband weighing 642.100 kg ganja from the third accused and seized the



Crl.OP.Nos.7827 & 8876 of 2023

contraband along with vehicle. All the formalities were completed at about 4 pm on 05.12.2021. Thereafter, served summons dated 05.12.2021 as contemplated under Section 67 of NDPS Act to the third accused and directed the third accused to appear in the respondent office. At the same time, on 04.12.2021, the summon was prepared and served to the second accused on 05.12.2021. Though confession statement was recorded on 05.12.2021, another summon was prepared in the name of the first accused and the same was served on 06.12.2021. The prosecution failed to explain how the summon was prepared on 04.12.2021 itself in the name of the first accused when the confession statement itself was recorded on 05.12.2021 from A2 and A3. Only on their confession statement, the first accused and the fifth accused had been implicated as accused. The prosecution also failed to prove that the phone numbers used by the petitioners and made call to other accused persons belong to them. Admittedly, except the confession statement of the co accused, no other materials are produced to connect the petitioners along with other accused A2 and A3 who had previous antecedents. Therefore, the petitioners made out a *prima facie* case in order to satisfy



the twin conditions as contemplated under Section 37 of NDPS Act.

9. Considering the above facts and circumstances of the case and also the period of incarceration by the petitioners, this Court is inclined to grant bail to the petitioners. Accordingly, the petitioners are ordered to be released on bail on their executing a separate bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two blood related sureties, each for a like sum to the satisfaction of the learned II Additional NDPS Court, 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;

(b) the petitioners shall appear before the trial court daily at 10.30 a.m. and 05.30 p.m. until further orders

(c) the petitioners shall not tamper with evidence or witness either during investigation or trial;

(d) the petitioners shall not abscond either during investigation or trial;



Crl.OP.Nos.7827 & 8876 of 2023

WEB COPY

(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]; and;

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

12.07.2023

lok



WEB COPY



Crl.OP.Nos.7827 & 8876 of 2023

G.K.ILANTHIRAIYAN, J.

lok

To

1. II Additional NDPS Court,
Chennai
2. Intelligence Officer,
Union of India,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai
3. Puzhal Prison,
Chennai.
4. The Public Prosecutor,
High Court, Madras

Crl.OP.Nos.7827 & 8876 of 2023

12.07.2023