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Crl.O.P.No.7891 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

Crl.O.P.No.7891 of 2023

M.Karthi

.. Petitioner

/versus/

State rep.by
The Inspector of Police,
NIB-CID, Chennai.
(Crime No.19 of 2020)

.. Respondent

Prayer: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code, praying to enlarge the petitioner on bail pending in C.C. No.1 of 2021 on the file of the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr. M.G.Martinmanivannan
For Respondent : Mr.S.Vinoth Kumar
Govt. Advocate (Crl.Side)

ORDER

The petitioner, who was arrested on 18.07.2020 for the offences punishable under Sections 8(c), 20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.19 of 2020, on the file of the respondent police, seeks bail.



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2. The case of the prosecution is that on 18.07.2020 at about 7.00 hours, the respondent police based on a secret information intercepted a TATA 1109 vehicle bearing registration No.TN-02BQ-4594 At Madhavaram Roundtana and seized 74 kgs of ganja from A1 to A3. Thereafter based on the confession statement given by them, the respondent police found A4 and A5 waiting in Honda Activa bearing registration No.TN 10 BK 5317 and seized 31 kgs of Ganja from them. The petitioner herein is arrayed as A3.

3. The learned counsel for the petitioner would submit that the petitioner is arrayed as A3 in this case and as per the prosecution, 74 kgs of Ganja is alleged to have been recovered from the possession of A1 to A3. He would submit that the petitioner is in custody from 18.07.2020. He would submit that as per the prosecution based on the confession recorded from them, the respondent has also arrested A4 and A5 who were waiting in a Honda Activa vehicle bearing registration No.TN 10 BK 5317 and from them 31 kgs of Ganja has been recovered which is a commercial quantity. He would further submit that the co-accused



A5/Tamilarasan who was also arrested with commercial quantity of Ganja had earlier filed bail application before this Court in Crl.O.P.No.25195 of 2022 and this Court by order dated 18.10.2022, taking into consideration of the provision under Section 37 of the NDPS Act, had dismissed the bail application. Against the order of dismissal, A5 (A.Tamilarasan) had filed SLP before the Honorable Supreme Court and the Honorable Apex Court granted bail to A5 considering the long period of incarceration and as it would take some more time for the trial to be completed. He would submit that the petitioner is also similarly placed as that of A5. The petitioner admits that he was earlier arrested in a previous case registered against him under NDPS Act in which, he was implicated only based on the confession recorded from the co-accused. He would submit that the previous case was taken for trial in C.C.No.111 of 2020 on the file of the learned Principal Special Judge, the Special Court under EC and NDPS Act cases, Chennai and the learned trial Judge finding that there was no material to frame the charges against the petitioner, had discharged the petitioner in the previous case. He would submit that the petitioner has no other case against him and the petitioner is entitled for bail on parity with A5 who has been similarly placed and



who has been granted bail by the Honorable Supreme Court in SLP.No.1367 of 2023 dated 18.10.2022. He would further submit that A1 has been granted bail before this Court in Crl.O.P.No.5551 of 2023 on 12.04.2023. Hence, he prays for grant of bail to the petitioner.

4. The learned Government Advocate(Crl.Side) would submit that it is a case where the petitioner along with two other accused were arrested for having found in possession of 74 kgs of Ganja. He would submit that based on the confession recorded from the petitioner, two other persons A4 and A5 have been arrested and from them 31 kgs of Ganja was recovered. He would further submit that the co-accused in this case was also arrested for having found in possession of commercial quantity of Ganja and that he has been directed to be released on bail by the Honorable Supreme Court in SLP.No.1367 of 2023 dated 18.10.2022 taking into consideration the long incarceration. He would submit that the case has now posted for examination of further witnesses and he would oppose for grant of bail.



5. Heard the learned Counsel for the petitioner and the learned Government Advocate(Crl.Side) and perused the materials available on record.

6. It is a case where the petitioner is arrayed as A3 and he was arrested on 18.07.2020 along with two other persons for having found in possession of 74 kgs of Ganja and based on the confession recorded from the petitioners, A4 and A5 who were waiting in the two wheeler were arrested and from their custody 31 kgs of Ganja, which is a commercial quantity was seized. The co-accused in this case had applied for bail before this Court in Crl.O.P.No.25195 of 2022 and the said bail application was dismissed by this Court by order dated 18.10.2020. Against the order of dismissal, the co-accused A5 (A.Tamilarasan) had approached the Honorable Supreme Court in SLP.No.1367 of 2023 and the Honorable Supreme Court taking into consideration the fact A5 was in custody for nearly 3 years, has granted bail to the co-accused. In such circumstances, this Court is of the opinion, the petitioner is also entitled for bail on parity with the co-accused/A5 and A1.

7. In view of the above, this Court is inclined to grant bail to the petitioner with certain conditions;



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8. Accordingly, the petitioner is ordered to be released on bail on this 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 **Principal Special Judge, Special Court under EC & NDPS Act, 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 petitioner shall report before the 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. It is made clear that the petitioner shall not move out of Chennai City without intimating the respondent police.

[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



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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.

19.04.2023

Speaking Order / Non-Speaking Order

Index : yes/no

Internet : yes/no

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To

- 1.The Principal Special Judge, Special Court under EC & NDPS Act, Chennai.
- 2.The Central Prison, Puzhal.
- 3.The Inspector of Police, NIB-CID, Chennai.
- 4.The Public Prosecutor, High Court, Madras.



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T.V.THAMILSELVI, J.

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