



CrI.O.P.No.8512 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 10.07.2023	Orders pronounced on 17.07.2023
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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.8512 of 2023

L..Balachander

... Petitioner

Vs.

Union of India through Intelligence officer
Narcotics Control Bureau
Madurai Sub Zone,
Chennai Zonal unit.

... Respondent

This Criminal Original Petition is filed under Section 439 Cr.P.C.
praying to enlarge the petitioner on bail pending trial in C.C.No.77 of 2022
on the file of Special Court for NDPS Act cases.

For Petitioner	: M/s.Mamta Pandey
For Respondent	: Mr.S.Rajendra Kumar Special Public Prosecutor



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ORDER

This Criminal Original Petition is filed praying to enlarge the petitioner on bail pending trial in C.C.No.77 of 2022 on the file of Special Court for EC and NDPS Act cases, Salem.

2. Learned counsel for petitioner submitted that petitioner is falsely implicated in C.C.No.77 of 2022 on the file of Special District and Sessions Judge for EC and NDPS Act Cases, Salem registered for the offences under Sections 8(c) read with 20(b)(ii)(c), 28 and 29 of NDPS Act. The information report produced by the NCB Officer speaks only about the accused Damodaran, Paramsivam and Easwaramoorthy and nothing is stated about petitioner. Petitioner is running transport business called 'Manchester Transport' and used to give vehicles for hire. Petitioner is implicated on the ground that he has escorted Ashok Leyland Dost vehicle bearing No.TN 33 BC 5243 with ganja, along with co-accused Easwaramoorthy in a vehicle bearing No.TN 39 BL 7456. No recovery of any contraband was made from the aforesaid vehicle, in which, petitioner was travelling, nor from the person of the petitioner. Eswaramoorthy had a



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criminal case pending in S.C.No.150 of 2019 on the file of II Additional District Judge Court, Vijayawada. Petitioner had only accompanied Easwaramoorthy for the hearing of the case. Apart from that, he has no connection whatsoever in the alleged illegal procurement of ganja. Petitioner is an MBA graduate doing vehicle business and paying GST. He has no history of involving in NDPS offence. He is in judicial custody from 22.11.2021. Learned counsel for petitioner pressed into service the following judgment of the Hon'ble Supreme Court for the proposition that long incarceration in a prison is a ground for grant of bail:-

(i) Special Leave to Appeal (Crl.) No.9067 of 2022 (Karanail Singh ..vs.. The State of Odisha)

It is the case where the petitioner is a victim of the circumstances that he was a helper in the truck and therefore, conscious and exclusive possession cannot be attributed to him. He is in prison from 21.03.2021 and therefore, he was granted bail. Relying on this judgment, learned counsel for petitioner submitted that no contraband was seized from the petitioner and he is in prison from 22.11.2021 and thus, he is entitled for bail. Thus, learned counsel for petitioner prays for release of petitioner on bail.



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3. In reply, learned Special Public Prosecutor appearing for respondent submitted that 212.500 Kg of ganja was seized on 20.11.2021 from Ashok Leyland Dost vehicle bearing No.TN 33 BC 5243 at Pallikonda Toll Plaza, from the possession of accused Dhamodharan, Paramasivam, Easwaramoorthy and petitioner Balachander. Petitioner was arrested on 22.11.2021 for the alleged offences under Sections 8(c) r/w. 20(b)(ii)(c), 28 and 29 of NDPS Act. Petitioner has actively helped Easwaramoorthy in procuring ganja from Andhra Pradesh. He had accompanied accused Easwaramoorthy multiple times for monetary gain. Petitioner and Easwaramoorthy had travelled in Innova car bearing No.TN 39 BL 7456 as escort for the vehicle Ashok Leyland Dost bearing No.TN 33 BC 5243, which transported ganja. There are calls made between petitioner (A4) and A3 through petitioner's cell phone No.99527 78899 and first accused's cell phone No.90954 20301. Prior to this incident, petitioner had accompanied third accused three times. First accused's other cell phone number is 87789 95480. There are calls made by A1 and A4 on 04.08.2021. Location of petitioner's cell phone shows that he was in Andhrapradesh for procuring



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ganja. First accused made a call to petitioner through cell phone No. 90954 20301 on 19.11.2021. Therefore, learned Special Public Prosecutor submitted that petitioner, knowing fully well that he was involved in illegal procurement of ganja, accompanied A3 Easwaramoorthy in an escort vehicle for monetary consideration. The ganja involved is a commercial quantity. Petitioner has not satisfied the twin conditions under Section 37 of NDPS Act for securing bail. Thus, learned Special Public Prosecutor prays for dismissal of this petition.

4. Considered the rival submissions and perused the records.

5. It is seen that in the information report, there is nothing said about this petitioner, however, the fact remains that petitioner was caught along with third accused Easwaramoorthy in a car bearing No.TN 39 BL 7456. It is alleged that this car accompanied the vehicle Ashok Leyland Dost bearing No. TN 33 BC 5243, as an escort vehicle. It is alleged that petitioner had earlier accompanied A3-Easwaramoorthy three times for procuring ganja, for monetary consideration. Learned Special Public



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Prosecutor produced details of call records to show the cellphone conversations among the accused in this case during, prior to and after the procurement of ganja. Though it is now settled that statement under Section 67 of NDPS Act is inadmissible in evidence, in the case before hand, apart from the statement of petitioner and co-accused recorded under Section 67 of NDPS Act, other incriminating materials like cellphone conversations among the accused prior to, during and after procurement of ganja, are available. Call details show that petitioner was in Andhrapradesh multiple times, especially during the period from 15.11.2021 to 19.11.2021 and he had conversations with A1 through cellphone.

6. When a question was posed to learned counsel for petitioner as to why petitioner had accompanied A3-Easwaramoorthy, when he has flourishing transport business, learned counsel for petitioner submitted that petitioner accompanied A3-Easwaramoorthy as an acting driver and accompanying him for the hearing of the case in II Additional District Judge's Court, Vijayawada. This submission of learned counsel for petitioner is hard to believe for the reason that when petitioner claims



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himself as the owner of 'Manchester Transport' business having multiple vehicles, what is the necessity for him to act as an active driver. He could have sent someone to act as active driver. Then again, why he has to accompany Easwaramoorthy to attend the court hearing, when he has the business to look after. The reason projected by learned counsel for petitioner to accompany Easwaramoorthy is unbelievable. Considering the fact that Easwaramoorthy is a kingpin for the procurement of ganja, that petitioner was found along with him, without any valid reasons, and that there were cellphone conversations among accused, including first accused and this petitioner, this Court is of the view that there are grounds for believing that petitioner has committed the offences alleged against him under Sections 8(c) r/w 20(b)(ii)(c), 28 and 29 of NDPS Act. Ganja involved is a commercial quantity. When there is prima facie material available to believe that petitioner has formed part of the group of accused in procuring and transporting ganja, this Court is of the view that petitioner has not satisfied the twin conditions under Section 37 of NDPS Act for grant of bail.



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17.07.2023

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Note : Issue order copy today (17.07.2023) itself.

Index : Yes/No

Internet: Yes

Speaking Order/Non-speaking Order

To

1. The Presiding Officer
Special Court for EC and NDPS Act cases
Salem.
2. Union of India through Intelligence officer
Narcotics Control Bureau
Madurai Sub Zone,
Chennai Zonal unit.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.CHANDRASEKHARAN,J.

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order in
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