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Crl.O.P.No.8736 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.No.8736 of 2023

Senthilkumar
S/o.Thangavel

... Petitioner

Vs.

State Represented by
The Inspector of Police
Ulundurpet PEW Police Station,
Kallakurichi District.
(Crime No.21 of 2023).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail in Crime No.21 of 2023 pending on
the file of the respondent herein.

For Petitioner : Mr.M.Rajal

For Respondent : Mr. C.E.Pratap
Government Advocate (Crl. Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody
on 10.02.2023, for the offences punishable under Sections 8(c) r/w 20(b)
(ii)(B) of NDPS Act @ Sections 8(c) r/w 20(b) (ii) (C) and 29(1) of NDPS
Act in Crime No.21 of 2023 on the file of the respondent police, seeks bail.



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2. The case of the prosecution is that on 09.02.2023, based on a secret information, the respondent police intercepted a government bus and caught hold of the 1st accused namely Silamburaja and on search, he was found in illegal possession of 10 kgs. of Ganja. Later based on the confession recorded from him, A2 to A4 were implicated in this case and 150 grams of Ganja was recovered from A2, 100 grams of Ganja was recovered from A3/the petitioner herein and on 15.02.2023, 16 kgs. of Ganja was recovered A4. In total 26.250 kgs. of Ganja was recovered from all the 4 accused persons. Hence, case.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution and he has been falsely implicated in this case based on the confession recorded from A1. Though as per the prosecution, the quantity of Ganja alleged to have been recovered from all the accused persons in total is stated to be commercial quantity, the contraband alleged to have been recovered from the petitioner on 10.02.2023 is only 100 grams. which is very small quantity. He would submit as per the prosecution on 09.02.2023, 10 kgs of Ganja was recovered from A1 and based on his confession, 150 grams and 100 grams were recovered from A2 and



A3/petitioner herein and thereafter, much belatedly i.e. on 15.02.2023, A4 has been arrested from whom 16 kgs of Ganja is alleged to have been recovered. In such circumstances, the contrabands recovered separately, cannot be clubbed together and treated as commercial quantity and that there is no nexus between the petitioner and A4. He further submitted that the petitioner has been suffering incarceration from 10.02.2023 and he is ready to abide by any stringent conditions that may be imposed against him. He further submit that without prejudice to his rights and defence, the petitioner is ready to deposit a substantial amount to any charitable institution as may be directed by this Court. He further submitted that A1 from whom 10 kgs. of Ganja is stated to have been recovered, has been granted bail by this Court in Crl.O.P.No.9360 of 2023 dated 27.03.2023. Hence, he prayed for grant of bail to the petitioner.

4. The learned Government Advocate (Criminal Side) for the respondent vehemently opposed to grant bail to the petitioner stating that A1 was arrested along with 10 kgs. of Ganja and based on his confession, A2 and A3/petitioner were arrested from whom 150 grams and 100 grams of Ganja were recovered. Subsequently, A4 was arrested on 14.02.2023 and remanded to judicial custody on 15.02.2023. from whom 16 kgs. of Ganja



was recovered and in total 26.250 kgs. of Ganja was recovered from all the 4 accused persons.

5. The respondent has filed a detailed counter in which, the specific overt act of the accused persons are mentioned as follows;

S. No	Name of the Accused	Contraband seized	Commercial/ Non Commercial	NDPS Schedule No	Chemical Report
1.	Silamburaja/A1	10 kgs of Ganja	Intermediate quantity	55	Obtained on 09.03.2023 vide Villupuram, Bo.Po.No.60 of 2023 dated 28.02.2023. The sample are confirmed to be Ganja
2.	P.Senthilkumar/A2	150 Grams Ganja	Intermediate quantity	55	
3.	T.Senthilkumar/A3	100 Grams Ganja	Intermediate quantity	55	
4.	Babu Naidu/A4	16 kgs Ganja	Intermediate quantity	55	

6. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl. Side) and perused the materials available on record including the FIR and the counter filed by the respondent police.

7. As per record, the A1 is stated to have been arrested on 09.02.2023 and from him 10 kgs. of Ganja is alleged to have been recovered and subsequently, the petitioner/A3 and A2 have been arrested and from them 100 grams and 150 grams of Ganja is stated to have been recovered.

Later, after 6 days, based on the confession recorded from A1, A4 has been



arrested on 15.02.2023 from whom, 16 kgs. of Ganja is alleged to have been recovered.

8. In the opinion of this Court, both the contraband cannot be clubbed together and as per records, only 100 grams of Ganja has been recovered from the petitioner/A3 which is very small quantity and therefore, Section 37 of NDPS Act, will not be applicable to the petitioner and hence, the petitioner is entitled for bail.

9. Considering the above facts and circumstances of the case and the submissions made by the learned counsel on either side and also considering the period of incarceration undergone by the petitioner and that similarly placed accused/A1 from whom 10 kgs. of Ganja is alleged to have been recovered, has been granted bail by this Court, this Court is inclined to grant of bail to the petitioner with certain conditions.

10. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.15,000/- (Rupees Fifteen Thousand Only)** with **two sureties**, each for a like sum to the satisfaction of the **Special Court for trial cases of NDPS Act, Villupuram**, 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 stay at Kallakurichi and report before the respondent police everyday at 10.30 a.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 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.

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To
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1. The Special Court for Trial Cases of NDPS Act, Villupuram.
2. The Inspector of Police
Ulundurpet PEW Police Station,
Kallakurichi District.
3. The Central Prison, Cuddalore.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.,

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