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CrI.OP.No.17963 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

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

CrI.OP.No.17963 of 2023

R.Aravinthan

... Petitioner/A2

Vs.

State Rep. by
Inspector of Police,
N-4, Fishing Harbour Police Station,
Chennai 600 013
(crime No.121 of 2022)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail pending trial in CC.No.460 of 2022 on the file of the Principal Special Judge of Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.S.Apunu

For Respondent : Mr.R.Kishore Kumar,
Government Advocate
(crl.side)



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 26.06.2022 for the alleged offences punishable under Sections 8(c) r/w 22(c) & 29(1) of NDPS Act, 1985 in Crime No.121 of 2022 on the file of the respondent police, pending trial in CC.No.460 of 2022 on the file of the Principal Special Judge of Principal Special Court under EC & NDPS Act, Chennai, 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



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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 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



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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. Hence, he vehemently opposed to grant of bail to the petitioner.

6. There are totally two accused, in which the petitioner is arrayed as second accused. The specific contention raised by the petitioner is that the petitioner is no way connected with the first accused. Even according to the case of the prosecution, recovery was made only from the first accused. In fact, the father of the first accused had given intimation about the contraband which was possessed and sold by one, Ramesh and her sister Menaka. Therefore, Ramesh and others had murdered his father. The first accused is also possessing fishing boats and he is doing fishing. Insofar as the petitioner is concerned, though the petitioner had been implicated as an accused on the confession statement made by the first accused, on perusal of the confession statement of the



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first accused, only in the final portion of the statement, he has stated that he along with the petitioner used to purchase 'ganja' and share the profits. The entire contraband was recovered from the first accused and the recovery mahazar also stated as only from the first accused.

7. The learned counsel for the petitioner submitted that the petitioner disputed the arrest and presence along with the first accused. Therefore, before the trial court, the petitioner filed application under Section 91 of Cr.P.C for production of CCTV footages. However, the respondent submitted that there was no CCTV footage and as such, the request made by the petitioner was negated by the trial court. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble High Court of Madhya Pradesh in the case of **Vicky Vs. The State of Madhya Pradesh** in M.Cr.C.No.24825 of 2021 and relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Singh Soni Vs. Baljit Singh and others** reported in **2021 (1) SCC 184**, wherein it is held as follows:

"17. CCTV systems that have to be installed



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must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as



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it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.

18. Whenever there is information of force being used at police stations resulting in serious injury and/or custodial deaths, it is necessary that persons be free to complain for a redressal of the same. Such complaints may not only be made to the State Human Rights Commission, which is then to utilise its powers, more particularly under [Sections 17 and 18](#) of the Protection of Human Rights Act, 1993, for redressal of such complaints, but also to Human Rights Courts, which must then be set up in each district of every State/Union Territory under [Section 30](#) of the aforesaid Act. The Commission/Court can then immediately summon CCTV camera footage in relation to the incident for its safe keeping, which may then be made available to an investigating agency in order to further process the complaint made to it.

8. Further, the petitioner also filed application under Section 91



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of Cr.P.C. for production of call detail records between the first accused and second accused and it is pending in Crl.MP.No.4760 of 2022 before the trial court. That apart, they also filed petition to discharge them from the charges and it is also pending. The petitioner had no previous cases except one case for the offence under IPC. Therefore, the prosecution failed to produce any iota of evidence to connect the petitioner along with the first accused except the confession statement of the first accused. Therefore, the petitioner made out a prima facie case in order to substantiate 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 petitioner from the date of his arrest i.e. 26.06.2022, this Court is inclined to grant bail to the petitioner with certain conditions.

10. Accordingly, the petitioner is ordered to be released on bail on his executing bond for a sum of Rs.10,000/- (Rupees Ten Thousand



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only) with two blood related sureties, each for a like sum to the satisfaction of the learned Principal Special Judge of Principal 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 i.e. Principal Special Judge of Principal Special Court under EC & NDPS Act, Chennai daily at 10.30 a.m. and 05.30 p.m. until further orders

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

(d) the petitioner shall not abscond 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.



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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.

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Principal Special Judge of Principal Special Court under
EC & NDPS Act, Chennai
- 2.Inspector of Police,
N-4, Fishing Harbour Police Station,
Chennai 600 013
- 3.The Central Prison,
Puzhal
- 4.The Public Prosecutor,
High Court, Madras

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