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CrI.OP.No.10301 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.05.2023

CORAM

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

CrI.OP.No.10301 of 2023

Alaguraja

... Petitioner/ A2

Vs.

The State Represented by,
Inspector of Police,
Secretariat Colony Police Station,
Chennai District.
Crime No.73 of 2022

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in C.C.No.416 of 2022 on the file on the Principal Judge for EC & NDPS Act of in Crime No.73 of 2022 on the file of the Respondent police.

For Petitioner : Mr.G.Prabhakaran

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 17.03.2022 for the offence punishable under Sections 8(c) read with 20 (b)(ii) (B), 28 of NDPS Act, 1985, in Crime No.73 of 2022 on the file of the respondent police, seeks bail

2. There are totally two accused, in which the petitioner is arrayed as A2. The case of the prosecution is that the petitioner along with other accused, were selling 10 Kgs of Hahish oil and 1.250 gms of ganja. Hence, the case.

3. The learned counsel for the petitioner would submit that among two accused, the petitioner was not in possession of the alleged contraband even as per the prosecution. He also pointed out from the First Information Report that both have together committed the crime and even then, the alleged contraband was seized only from the first accused. He further submitted that the first accused has also been granted bail by



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this court in CrI.O.P.No.2495 of 2023 on 06.02.2023. Even the seizure mahazar says that the contraband was seized only from the first accused and the petitioner is wrongly connected with the other accused. Therefore, the petitioner seeks bail.

4. The learned Additional Public Prosecutor would submit that the petitioner along with other accused were selling 10 Kgs of Hahish oil and 1.250 gms of ganja. He further submitted that there is no change of circumstances after the previous dismissal orders passed by this court. Hence, he vehemently opposed to grant bail to the petitioner.

5. The petitioner is arrayed as 2nd accused. On perusal of the confession statement of 1st accused, he had nothing whispered about the overt act of the petitioner. However, even according to the case of the prosecution, the petitioner was also standing along with the 1st accused. Now, the 1st accused was granted bail by this Court on medical grounds. Admittedly, contraband was seized from A1. If at all there is any link between A1 and the petitioner, A1 would have confessed something



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about the part played by the petitioner. Therefore, the petitioner made out a *prima-facie* case in order to satisfy the twin conditions as contemplated under Section 37 of NDPS Act. Considering the above facts and circumstances of the case and also the period of incarceration by the petitioner, this Court is inclined to grant bail to the petitioner.

6. Accordingly, the petitioner is ordered to be released on bail on his 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 Principal Special Court EC & NDPC Act Cases, 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 daily 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.



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[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 absconds, a fresh FIR can be registered under Section 229A IPC.

05.05.2023

mpl



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G.K.ILANTHIRAIYAN, J.

mpl

To

- 1.The Principal Special Court EC & NDPS Act cases,
Chennai.
- 2.The Inspector of Police,
Secretariat Colony Police Station,
Chennai District.
- 3.Central Prison, Puzhal.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai

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