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Crl.O.P.No.11240 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

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

Crl.O.P.No.11240 of 2023

Mafaaz

... Petitioner

Vs.

State represented by
The Inspector of Police,
C-2, Elephant Gate Police Station,
Chennai -600 001.
(Crime No.210 of 2022)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleased to enlarge the petitioner on bail in C.C.No.342 of 2022 on the file of
Principal Special Court under EC & NDPS Act Chennai.

For Petitioner : Mr.G.Vinodhkumar

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



ORDER

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The petitioner, who was arrested and remanded to judicial custody on **11.03.2022** for the offences punishable under Sections 8(c), r/w 20(b)(ii)(c), 25 and 29(1) of the NDPS Act, in Crime No.210 of 2022 on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the defacto complainant who is the Sub Inspector of Police attached to the respondent police station is that on 22.04.2022, based on a secret information, he along with his police party went to Wall Tax Road, NSC Bose Road Junction and when they were conducting vehicle check up, they intercepted four persons who were coming in a Blue Colour Swift Car bearing Regn.No.TN 04 AU 5320 and on enquiry, A1 and A2 revealed that they had purchased dry Ganja weighing 25.437 Kgs. and Ganja Oil 1.045 liters from Andhra for sale. Later, based on their confession that they received a sum of Rs.5,000/- from the petitioner for purchasing of Ganja from Visakapattinam, the petitioner was arrested and remanded to judicial custody on 11.03.2022.



3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He further submitted that though the occurrence is said to have taken place on 22.04.2022, the petitioner was arrested only on 11.03.2023 based on the confession alleged to have been recorded from A1 and A2 and other than the alleged confession recorded from A1 and A2 from whom commercial quantity of contraband was recovered, there is absolutely no other material to connect the petitioner in this case. He would also submit that there is no previous case against the petitioner and that the petitioner has been suffering incarceration from 11.03.2023. He further submitted that while the petitioner had moved a petition before this Court in Crl.O.P.No.9496 of 2023, without the knowledge of the petitioner, another petition was moved before the lower Court. On coming to know about the pendency of the same, this Court dismissed the same by imposing cost of Rs.5,000/- to be paid to the Legal Services Authority, Chennai. He would submit that the said cost has been paid and he also produced the copy of receipt for the same. He would further reiterate that other than the confession recorded from the co-accused, there is no material against the petitioner. Hence, he prayed for grant of bail to the petitioner.



4. The learned Government Advocate (Crl. Side) vehemently opposed for grant of bail to the petitioner stating that the petitioner is arrayed as A4 in this case. A1 and A2 who are husband and wife, were arrested on 22.04.2022 for having found in possession of 25.437 Kgs. of dry Ganja and 1.045 liters of Ganja Oil respectively and that the petitioner has been implicated in this case based on the confession recorded from A1 and A2 that the petitioner had handed over them a sum of Rs.5,000/- for purchasing of Ganja from Visakapattinam. However, he would fairly admit that there is no recovery from the petitioner and there is no other material to connect the petitioner in this case other than the confession recorded from A1 and A2.

5. The respondent has filed a detailed counter.

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

7. Admittedly, A1 and A2 have been arrested with commercial quantity of Ganja on 22.04.2022 and subsequently, based on their confession, the petitioner has been arrested later on 11.03.2023. However,



absolutely there is no recovery from the petitioner and other than the alleged confession, there is no other material to implicate this petitioner in this case.

Therefore, this Court is of the opinion that the petitioner has satisfied the twin conditions as required under Section 37 of NDPS Act.

8. Considering the above facts and circumstances of the case, the submissions made by the learned counsel on either side and the period of incarceration undergone by the petitioner, this Court is inclined to grant of bail to the petitioner with certain conditions.

7. Accordingly, the petitioner is directed to make a non-refundable deposit of Rs.25,000/- (Rupees Twenty Five Thousand only) by way of **RTGS/NEFT to the credit of "M/s.The Tamil Nadu Juvenile Justice Fund, Account Number : 358001000000671, IFSC Code : IOBA0001288, MICR:600020073, Indian Overseas Bank, SME Kilpauk Branch, 20, Ormes Road, Kilplauk, Chennai-600 010"**, without prejudice to his rights and contentions before the trial Court, on such deposit and production of proof, 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 **learned Metropolitan**



Magistrate No.VIII, George Town, 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 learned Principal Special Court under EC & NDPS Act, Chennai, on all working days at 10.30 a.m. until further orders.

[c] the petitioner shall not abscond during trial;

[d] the petitioner shall not tamper with evidence or witness during 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 petitioners 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]*;



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[f] If the accused thereafter abscond, a fresh FIR
can be registered under Section 229A IPC.

05.06.2023

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To

1. The Metropolitan Magistrate - VIII,
George Town, Chennai.
2. The Inspector of Police,
C-2, Elephant Gate Police Station,
Chennai -600 001.
3. The Central Prison, Puzhal – II, Chennai.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.,

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