



WEB COPY



Crl.O.P.No.13020 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM

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

Crl.O.P.No.13020 of 2023

Pandi

... Petitioner

Vs.

State rep by
The Inspector of Police
NIB CID,
Salem.

Crime No.3 of 2022

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail in Crime No.3 of 2022 on the file of
the respondent police.

For Petitioner : Mr.P.Aju Tagore

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

ORDER

The petitioner, who was arrested and remanded to judicial custody
on 07.01.2022 for the offences punishable under Sections 8(c) r/w
20(b)(ii)(c), 29(1) of NDPS Act, in Crime No.3 of 2022 on the file of the
respondent police, seeks bail.



WEB COPY

2. The case of the prosecution is that on 07.01.2022 at about 05.15a.m., the Inspector of Police, on receipt of a secret information about the illegal transportation of ganja in Train No.17230, Sabari Express, had entered the same in the General Diary and went to Salem Railway Station along with his police team and entered in Sabari Express and conducted check up, at that time, the accused persons were found in S7 Coach of the train and they were in possession of 21 kgs of dry ganja, which is a commercial quantity and the same was seized under the cover of seizure mahazar in the presence of witnesses and arrested the accused.

3. The learned counsel for the petitioner would submit that this is the fourth application for bail and the earlier application for bail was dismissed on the ground that the petitioner was found in possession of 21 kgs of ganja, which is a commercial quantity. He would further submit that subsequent to the dismissal of the earlier application of the petitioner, the co-accused in this case namely Irulappan has filed an application for bail in Crl.O.P.No.8117 of 2023 and this Court taking into consideration that the said Irulappan was in possession of 12.5 kgs of Ganja, which is not a commercial quantity, had granted bail to the said Irulappan by order dated 19.04.2023. He would further submit that even as per the prosecution, the



petitioner is stated to be found along with the said Irulappan in a train compartment and when the said Irulappan, who was having 12.5 kgs of Ganja, has been granted bail, the petitioner, who was holding a lesser quantity of 8.5 kgs of Ganja, is entitled to bail on parity. He would further submit that it is not a case, where the petitioner and the said Irulappan have travelled using a single ticket and they are related or connected and even as per the prosecution, they were travelling separately and thereby, the individual quantity cannot be clubbed together to bring it as a commercial quantity. He would further submit that earlier it was wrongly represented by the respondent Police that the petitioner is involved in 10 previous cases and now only it was found that the petitioner has got four previous cases. He would also submit that the petitioner has got permanent residence in Madurai and his close relatives are ready to stand as surety to him. Hence, he prayed for grant of bail to the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that the co-accused in this case namely Irulappan, who was found in possession of 12.5 kgs of Ganja, has been granted bail by this Court in Crl.O.P.No.8117 of 2023 on 19.04.2023. He would further submit that as far as the petitioner is concerned, four previous cases of similar nature are pending against him. He would also submit that the case has been



taken up for trial in Spl.C.C.No.43 of 2022 pending on the file of the Special Court for EC/NDPS Act cases, Salem and it is yet to be commenced and the case now stands posted to 03.07.2023 for appearance of L.W.1. Hence, he opposed for grant of bail to the petitioner.

5.In reply, the learned counsel for the petitioner would submit that without prejudice to his defence, the petitioner is ready and willing to deposit a sum of Rs.25,000/- to any welfare scheme run by the Government as may be directed by this Court. Hence, he prayed for grant of bail to the petitioner.

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.

7. On considering the voluntary submission made by the learned counsel for the petitioner, the petitioner is directed to deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) directly to the "The Head Master, Government Higher Secondary School, Usilampatti" without prejudice to his rights and contentions before the trial Court.



8. Merely, because the petitioner deposits the said amount, it would not amount to admission of his guilt. Therefore, it is open to the trial Court to deal with the case independently.

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

10. Accordingly, the petitioner is directed to make a non refundable deposit of Rs.25,000/- (Rupees Twenty Five Thousand Only) directly to the "The Head Master, Government Higher Secondary School, Usilampatti", 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**, (out of which, one surety should be the blood relative of the petitioner), each for a like sum to the satisfaction of the learned Additional District and Sessions Judge, Special Court under EC Act cases, Salem District, and on further conditions that:



WEB COPY



Crl.O.P.No.13020 of 2023

[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 on all working day at 10.30 a.m., for a period of two weeks and thereafter, on the date fixed by the learned trial Judge;

[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 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]*;

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

15.06.2023

vkrr



Crl.O.P.No.13020 of 2023

To
WEB COPY

1. The Additional District and Sessions Judge,
Special Court under EC Act cases, Salem District.
2. The Inspector of Police
NIB CID, Salem
3. The District Prison, Salem.
4. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.13020 of 2023

A.D.JAGADISH CHANDIRA,J.,

vk

Crl.O.P.No.13020 of 2023

15.06.2023