



Crl.O.P.No.13118 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

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

Crl.O.P.No.13118 of 2023

Razak

... Petitioner

Vs.

The Inspector of Police
R-2, Kodambakkam Police Station
Chennai District
(Crime No.44 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.44 of 2023 on the file of
the respondent police.

For Petitioner : Mr.P.Muthamizh Selvakumar

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 10.03.2023 for the offences punishable under Sections 8(C), 20(b)(ii)(C), 29(1) and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.44 of 2023 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 04.03.2023, based on a specific information, the respondent police intercepted 3 persons/A1 to A3 who came in a two wheeler bearing Regn.No.TN 18 AJ 3045 and on search, they seized 21.700 kgs. of Ganja from them. On enquiry, A3/Mohan confessed that A4/Ranjith, A5/Gokul and A8/Sai Krishnan had purchased the said contraband from Thuni at Andhra Pradesh and the same was thrown by them at Perambur Railway Track. Subsequently, the petitioner/A7 and A6 picked up the contraband from the railway track and handed over the same to A3/Mohan. Thereafter, A1 to A3 took the contraband from the backyard of A3's house. Hence, the case.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent and he has been falsely implicated in this case based on the confession recorded from one Mohan/A3 that the contraband was



handed over to him by the petitioner/A7 and another accused/A6 namely Duraiarasan. The fact remains that the petitioner has got 4 previous cases under NDPS Act, registered by the respondent police as well as by the various other police stations. Hence, he has been falsely implicated in this case. He would further submit that the petitioner has been languishing in jail for 100 days from 10.03.2023. He would reiterate that only based on the confession recorded from the co-accused, the petitioner has been implicated in this case. Other than that there is absolutely no recovery from the petitioner and that there is no material to show that the petitioner and one Duraiarasan/A6 had handed over the contraband to A3/Mohan. He would further submit that the said Duraiarasan who is similarly placed as that of the petitioner, has been granted bail by this Court in Crl.O.P.No.12941 of 2023 by order dated 12.06.2023. On instructions he would submit that the petitioner without prejudice to his defence, is ready and willing to deposit a substantial amount to any welfare scheme run by the Government as may be directed by this Court and he prayed for grant of bail to the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent vehemently opposed for grant of bail to the petitioner stating that the respondent police had seized commercial quantity of 21.700 Kgs. of



Ganja from one Mohan/A3 and he had confessed that the petitioner/A7 and one Duraiarasan/A6 had handed over the same to him. He further submitted that the petitioner has got 5 previous cases out of which, 4 cases are registered for the offence under NDPS Act.

5. The respondent has filed a detailed counter.

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

7. The allegations against the petitioner is that the petitioner is stated to have handed over commercial quantity of contraband weighting 21.700 Kgs. to one Mohan/A3. Admittedly, there is no recovery from the petitioner and that there is no material to connect the petitioner with the said Mohan/A3. This Court is of the opinion that the petitioner has complied with the twin conditions 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 and also of the fact that similarly placed co-accused has been granted bail by this Court, this Court is inclined to grant of bail to the petitioner with certain conditions.

9. Accordingly, the petitioner is directed to make a non-refundable deposit of **Rs.40,000/- (Rupees Forty 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-XVII, Saidapet**, 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;



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[b] the petitioner shall report before the Principal Special Court under EC & NDPS Act, Chennai District, on all working days 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

1. The Metropolitan Magistrate-XVII, Saidapet, Chennai
2. The Inspector of Police
R-2, Kodambakkam Police Station, Chennai District
3. The Central Prison, Puzhal
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.,

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