



Crl.O.P.No.14353 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM

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

Crl.O.P.No.14353 of 2023

Bhagabat Biswal

... Petitioner

/versus/

State represented by,
The Inspector of Police,
Jolarpet Police Station - Chennai Railways,
Chennai.

(Crime No.51 of 2022)

... Respondent

PRAYER : Criminal Original Petition filed under Section 439 of Criminal Procedure Code, pleased to enlarge the petitioner on bail pending trial Spl.C.C.No.74 of 2022 on the file of the learned Special Judge for EC/NDPS Act Cases, Salem.

For Petitioner : Mr.T.Balaji

For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)



Crl.O.P.No.14353 of 2023

WEB COPY

ORDER

The Criminal Original Petition has been filed seeking to enlarge the petitioner on bail in Spl.C.C.No.74 of 2022 pending trial on the file of the Special Court for EC & NDPS Act Cases, Salem (FAC), in connection with Crime No.51 of 2022 registered for the offence punishable under Sections 8(c) r/w 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The case of the prosecution is that on 13.04.2022, on receipt of the secret information, the respondent and his team conducted a check up, during which, they found that the accused was in illegal possession of 10 kilograms of Ganja and 23 Kilograms of Ganja Chocolate. The respondent has seized the contraband, arrested the accused and registered a case in Crime No.51 of 2022. The respondent, after completion of investigation, has filed a final report and the case has been taken up for trial in Spl.C.C.No.74 of 2022 on the file of the Special Court for EC & NDPS Act Cases, Salem. Hence the case.



CrI.O.P.No.14353 of 2023

WEB COPY

3. Mr.T.Balaji, learned counsel appearing for the petitioner submitted that the petitioner is a native of Odisha and he has been falsely implicated in this case. He further submitted that this is the third application for bail filed by the petitioner and this Court, while dismissing the earlier bail applications filed by the petitioner in CrI.O.P.Nos.28746 of 2022 and 7315 of 2023 vide orders dated 13.12.2022 and 10.04.2023 respectively, had directed the trial Court twice to complete the trial within a specified period, however, the directions of this Court are not complied with. He further submitted that there are totally 10 witnesses in this case and so far 6 witnesses have been examined as PW1 to PW6, in which PW1 to PW4 are Police Personnel and PW5 and PW6 are independent witnesses, who have been shown as witnesses at the time of recovering the contraband. However, the independent witnesses have not supported the case of the prosecution. Thereby, there is every possibility that the petitioner might have been falsely fixed in this case by the prosecution. He further submitted that the petitioner has no bad antecedents and in such circumstances, there are reasonable grounds for believing that the petitioner is not guilty of the offence and that he is also not likely to



Crl.O.P.No.14353 of 2023

commit any offence while on bail.

WEB COPY

4. Learned counsel appearing for the petitioner also submitted that the petitioner is ready to abide by any stringent conditions that may be imposed by this Court and also ready to furnish the blood sureties, who are also prepared to furnish the proof of their residence before the Court concerned. He also submitted that the petitioner is in custody from 13.04.2023 and thereby, the long period of incarceration may also be taken into consideration for grant of bail to the petitioner.

5. Learned Government Advocate (Crl.Side) appearing for the respondent Police submitted that it is the case where the petitioner, who is a resident of Odisha, was arrested for illegally transporting 10 kilograms of Ganja and 23 Kilograms of Ganja Chocolate, which is a commercial quantity. He further submitted that this Court, while dismissing the earlier bail applications, had twice directed the trial Court twice to complete the trial within a specified period. Though the regular Judge is not there, the trial is being conducted by the learned Additional District Judge and Presiding Officer, Special Court for EC and NDPS Act



Crl.O.P.No.14353 of 2023

Cases (FAC), Salem and out of 10 witnesses in this case, so far 6 witnesses have been examined, however, he fairly conceded that the independent witnesses PW5 and PW6 have not supported the case of the prosecution and they have been treated hostile. He also submitted that the case is at the fag end of trial and if the bail is granted at this stage, there is every possibility of the petitioner, absconding and derailing the further progress of trial. Hence, he opposed 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.

7. Earlier, this Court, finding that the contraband involved in this case is a commercial quantity and finding that the petitioner has not satisfied the twin conditions required under Section 37 of the NDPS Act, had dismissed the earlier bail applications. However, this Court, while dismissing the earlier bail applications filed in Crl.O.P.Nos.28746 of 2022 and 7315 of 2023 on 13.12.2022 and 10.04.2023 respectively, had directed the trial Court to complete the trial within a specified period.



CrI.O.P.No.14353 of 2023

WEB COPY

Despite the directions issued, the trial has not been completed. Now, it is submitted by the learned counsel for the petitioner that out of six witnesses examined, the independent witnesses who have been examined as PW5 and PW6 to prove the recovery from the petitioner, have not supported the case of the prosecution and they have been treated hostile by the prosecution. At this stage, this Court feels that the petitioner could have been falsely implicated by the respondent and also, this Court is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is also not likely to commit any offence while on bail. Further, this Court also taking into consideration a long period of incarceration i.e., from 13.04.2022 and the delay in trial, is inclined to grant bail to the petitioner.

8. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** with **two sureties (out of which, one shall be a blood related surety)**, each for a like sum to the satisfaction of the **learned trial Judge, Special Court for EC & NDPS Act Cases, Salem (FAC)**, and on further conditions that:



CrI.O.P.No.14353 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 sureties shall also produce the proof of their permanent residence before the learned trial Judge;

[c] the petitioner shall appear before the learned Judge, Special Court for EC & NDPS Act Cases, Salem (FAC), on all days at 10.30a.m., until further orders;

[d] the petitioner shall not abscond during trial;

[e] the petitioner shall not tamper with evidence or witness during trial;

[f] 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]***;

[g] If the accused thereafter abscond, a fresh



WEB COPY



CrI.O.P.No.14353 of 2023

FIR can be registered under Section 229A IPC.

06.12.2023



Crl.O.P.No.14353 of 2023

To

WEB COPY

1. The Special Court for EC & NDPS Act Cases,
Salem (FAC).
2. The Judicial Magistrate – II,
Salem.
3. The Inspector of Police,
Jolarpet Police Station - Chennai Railways,
Chennai.
4. The Central Prison,
Salem.
5. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.No.14353 of 2023

A.D.JAGADISH CHANDIRA,J.

ham

Crl.O.P.No.14353 of 2023

06.12.2023