



Crl.O.P.No.14303 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 11.08.2023	Orders pronounced on 18.08.2023
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.14303 of 2023

1. Mahalingam
 2. Alex
- ... Petitioners

Vs.

State rep by
The Inspector of Police
N-1 Royapuram Police Station,
Chennai.
[Crime No.131/2023)

... Respondent

This Criminal Original Petition is filed under Section 439 Cr.P.C. to enlarge the petitioner on bail concerned in Crime No.131/2023, on the file of the Inspector of Police, N-1 Royapuram Police Station, Chennai on such terms and conditions may deem fit and proper in the circumstances of the case.

For Petitioners : Mr.R.C.Paul Kanakaraj
for
M/s.D.Prabu

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



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ORDER

This Criminal Original Petition is filed praying to enlarge the petitioner on bail concerned in Crime No.131/2023, on the file of the respondent police.

2. The case of the prosecution is that on 08.05.2023 at about 10.30 hours, when the defacto complainant along with police party had involved in regular patrolling, Near Anna Park, opposite to RSRM Hospital, Royapuram, they found two persons in a car bearing registration No.TN 66 AF 3629 under suspicious circumstances. After introducing themselves, they enquired them and know them as Kasim and Kumaravel. During the course of enquiry, accused admitted possessing Methamphetamine. After following necessary procedures, a search was conducted. The following articles were seized from the possession of accused Kasim.

- i) White colour crystal like object in a pocket;
- ii) One Nokia Button cellphone; and
- iii) One Realme grey colour cell phone.

When asked about the substance, Kasim informed that the substance is



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called Methamphetamine. When search was conducted on Kumaravel, he produced

- (i) 200 grams of Methamphetamine from the car dickey
- (ii) One blue colour i-phone and
- (iii) One Samsung blue colour cellphone.

The substance from Kasim weighed 300 grams and the substance from Kumravel weighed 200 grams. After following the procedures, Methamphetamine and other articles had been seized, samples were taken. Accused were arrested and First Information Report was registered in Cr.No.131 of 2023 for the offences under sections 8(c) r/w. 22(c), 25 and 29(1) of NDPS Act.

3. Petitioners are A3 and A4. As per the counter filed by respondent, the case against petitioners is that based on the confession of A1 and A2, a search was conducted near Clive Battery, next to Beach station. A3 and A4 came in search of the A1 and A2 along with 350 grams of Methamphetamine by A3 and 150 grams of Methamphetamine by A4. They were arrested near Clive Battery along with contraband and remanded to



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judicial custody on 09.05.2023. Contraband, mobile phones and car were also seized.

4. Learned counsel for the petitioners submitted that the petitioners are falsely implicated in this case. Petitioners were secured from their house by the police at about 9.15 a.m on 08.05.2023. There was no recovery of any contraband from the petitioners. This is evident from the CCTV footage available at the house of the petitioners. Arrest of the petitioners was widely published in Dhinathanthi - Tamil daily of Tanjore Edition, Dhinakaran - Tamil daily in Nagapattinam as well as Mayiladuthurai Edition. Petitioners name are not found in the First Information Report. They were implicated as per the confessional statement of co-accused.

5. During the course of hearing, learned counsel for the petitioners produced sworn affidavit of Mahalingam/first petitioner, sworn before the Jailer, Central Prison – II, Puzhal, Chennai. It is stated in this sworn affidavit that the Sub-Inspector of Police attached with



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Superintendent of Police, Nagapattinam along with 4 police personnel came to the house of the petitioners on 08.05.2023 at about 9.15 a.m and arrested the petitioners and brought them to Velankanni Police Station at about 9.30 a.m. The S.P., Branch Special Team handed over the petitioners to the Inspector of Police, Velankanni and informed him that the police from Royapuram Police station is coming to take the petitioners. When the petitioners were in Velankanni Police station, they were kept in a secluded room. The Deputy Superintendent of Police, Nagapattinam came to Velankanni Police station and kept the petitioners there till 3.00 p.m. At about 3.00 p.m, Mrs.Revathy, Inspector of Police, Keezhaiyur Police Station along with four police came to Velankanni Police Station. The Sub-Inspector Mr.Balamurugan handed over the petitioners to the Inspector of Police, Keezhaiyur.

6. At about 3.15 p.m, petitioners were asked to board a Police Van and four police persons came along with the Inspector Revathy and another police, namely, Mr.Dheen attached with special team brought the petitioners near Bridge over Kollidam River, Chidambaram, at about 6.30 p.m.



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Another police van was parked there and 10 persons in colour dress were also there. Inspector Revathy interacted with them and handed over the petitioners to them. She got endorsement from the Police team with regard to handing over the petitioners to them. This event was video-graphed and some photos were also taken. At about 7.00 p.m, Inspector of Police - Mrs.Vijayalakshmi of Nagapattinam 'Q' branch got clarification with the 10 persons police team and she clicked some photos and recorded videos at about 7.15 p.m.

7. Thereafter, Police team from Chennai took the petitioners to their custody in Starline Police Van to Pondicherry. They provided dinner in a hotel in between Pondicherry and Tindivanam and then, the petitioners were taken to Royapuram Police Station at about 1.30 a.m on 09.05.2023. Petitioners came to know that the Special Branch Sub-Inspector Thiru.Vinayagam and his team brought them to Royapuram Police Station. Petitioners were in custody at Royapuram Police Station till 7.00 p.m on 09.05.2023 and they were brought to Stanley Government Hospital, where no medical test was conducted to the petitioners and they were taken back to



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Royapuram Police Station and kept in custody till next day morning. At about 10.30 a.m on 10.05.2023, they were brought to Stanley Government Hospital and then, produced before the Judge at about 3.00 p.m. Then, they were lodged at Puzhal prison at about 5.30 p.m.

8. Petitioners do not know A1 and A2. They are implicated in this case as accused due to political vendata and conspiracy. The claim made by the respondent that the petitioners were enquired on 08.05.2023 with regard to the complaint given by one Mr.Thomas Alwa Edison is not true. Mr. Thomas Alwa Edison gave a complaint against second petitioner Alex in September or October, 2022 and then, withdrew his complaint. The Sub-Collector/Revenue Divisional Officer, Nagapattinam issued a summons dated 12.01.2023 to second petitioner Alex and one Lasar with a direction to furnish surety and undertaking not to involve in any activity affecting public tranquility. Accordingly, first petitioner's son Alex/second petitioner furnished surety and undertaking.

9. In support of his submission that the petitioners were taken



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from their house at about 9.15 a.m on 08.05.2023, petitioners have produced copy of the video footage in a pen drive and photographs. Petitioners have also produced newspapers report to show the arrest of the petitioners and that no recovery was made from petitioners. Copy of the summons issued by the Sub-Collector/Revenue Divisional Officer, Nagapattinam under Section 111 Cr.P.C. to Alex, copy of the order passed in Crl.O.P.No.2446 of 2023, which was filed challenging the summons issued by the Divisional Magistrate cum Sub-Collector/Revenue Divisional Officer, Nagapattinam in M.P.No.16/2023/A3 dated January 2023 are also produced.

10. It is the submission of the learned counsel for the petitioners that the respondent have foisted this false case against these petitioners, to put the petitioners in jail.

11. In reply, learned Additional Public Prosecutor submitted that the first petitioner was found with illegal possession of 350 grams of Methamphetamine and second petitioner was found with illegal possession of 150 grams of Methamphetamine.



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12. In the light of the materials produced by the petitioners in support of their case, this Court directed the learned Additional Public Prosecutor to get instructions from the concerned Investigating Officer and file counter. Accordingly, additional counter affidavit was filed by Mr.G.Mariappan, Inspector of Police, N-1, Royapuram Police Station, Chennai on 20.07.2023. As per the additional counter affidavit filed, petitioners were arrested on 09.05.2023 at about 14.30 hours near Clive Battery Bus Stop. It is shown in CCTV footage, petitioners were taken from their house at about 9.15 a.m on 08.05.2023. It would take 7 to 8 hours for travelling from Vilunthamavadi, Kilvelur Taluk, Nagapattinam to Chennai by road or by train. Therefore, the claim that the petitioners were arrested on 08.05.2023 in connection with this case is not correct. First petitioner/A3 has 12 (twelve) cases registered against him, of which 4 (four) cases are similar in nature. In other cases, 2 (two) cases ended in conviction, 3 (three) cases ended in acquittal, 3 (three) cases are pending for trial and 1 (one) case is under investigation. Second petitioner/A4 was involved in 5 (five) criminal cases. 1 (one) case ended in conviction, 1



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(one) case ended in acquittal, 2 (two) cases are pending for trial and 1 (one) case is under investigation.

13. It is admitted by the respondent, during the course of submission, that the petitioners were indeed taken from their residence at about 9.15 a.m on 08.05.2023 by the Nagapattinam Special Team Police led by Mr.Balamurugan, Sub-Inspector of Police attached to Special Team of Police, Nagapattinam District in connection with an enquiry regarding the complaint given by Edison @ Thomas Alwa Edison in connection with facing life threat from Thiyagu @ Thiyagarajan, second petitioner Alex, his hooligans and first petitioner Mahalingam. After the enquiry was over, petitioners were let off on the same date at about 2.00 p.m.

14. When the matter was taken up for hearing on 07.08.2023, it was informed by the learned Additional Public Prosecutor that the Superintendent of Police, Nagapattinam is conducting enquiry with the police officer named in the affidavit filed by the petitioner Mahalingam dated 27.07.2023. Once the enquiry is over, Superintendent of Police,



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Nagapattinam would file an affidavit in the Court on 11.08.2023. However on 11.08.2023, the affidavit of Superintendent of Police, Nagapattinam is not filed, but the affidavit sworn by J.Revathi, Inspector of Police, Keezhaiyur Police Station, Nagapattinam District was filed.

15. It is seen from the affidavit filed by J.Revathi, Inspector of Police, Keezhaiyur Police Station, Nagapattinam District that the petitioners were called for enquiry by special team led by Thiru.Balamurugan, Sub Inspector of Police, Special team, Nagapattinam District, and his team to the Velankanni Police Station in respect of Reminder Memorandum-IV. C.No.38-4/SB/OCIU/NGT/2022, dated 30.04.2023. There was enmity between Edison @ Thomas Alva Edison and Thiyaagu @ Thiagarajan in respect of getting election seat for second petitioner/A2 – Alex. Edison @ Thomas Alva Edison refused the request during Civic Election 2019. However, Alex contested independently and won with the support of Thiagarajan. Thiagarajan was dismissed from political party because of Edison @ Thomas Alva Edison. Therefore, Thiagarajan planned to eliminate Edison @ Thomas Alva Edison through hooligans and sought



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financial assistance from Alex. Petitioners acceded to this request.

Therefore, Edison is facing life threat from Thiyaagu @ Thiagarajan and Alex. As per the aforesaid Reminder Memorandum-IV, C.No.38-4/SB/OCIU/NGT/2022, dated 30.04.2023 sent by the Superintendent of Police, Nagapattinam District to conduct enquiry, Thiru.Balamurugan, Sub-Inspector of Police, special team, Nagapattinam District along with his team, visited the house of the petitioners for calling them for an enquiry. They were taken to Velankanni Police Station and enquired. After enquiry, they were sent back. The Special report submitted by Thiru.Balamurugan, Sub-Inspector of Police, dated 08.05.2023 is also produced. This report shows that after enquiry, the petitioners were sent to home at about 14 hrs on 08.05.2023. Other allegations made in the affidavit by first petitioner Mahalingam are totally denied. She admitted that on 08.05.2023, she went to Velankanni Police Station and enquired the petitioners in connection with the aforesaid Memorandum of Superintendent of Police, Nagapattinam.

16. Learned Additional Public Prosecutor further submitted that the accused were found in illegal possession of commercial quantity of



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Methamphetamine. First petitioner has 3 (three) similar previous cases pending against him. Second petitioner has other cases pending against him. If the petitioners are released on bail, they would indulge in similar offences. Petitioners have not satisfied the twin conditions under section 37 of NDPS Act for the grant of bail. Thus, learned Additional Public Prosecutor prayed for dismissal of this petition.

17. Considered the rival submissions and perused the records.

18. As per the case of prosecution, the petitioners were arrested near Clive Battery Bus Stop, along with commercial quantity of Methamphetamine on 09.05.2023. On the other hand, the case of the petitioners is that they were taken from their home on 08.05.2023 at about 9.15 a.m, kept under illegal police custody, brought to Chennai and this case was foisted against them. From the video footage and the photographs produced by the petitioners, it is proved beyond a pale of doubt that the petitioners were taken by the police in mufti at about 9.15 a.m on 08.05.2023, from their house. Respondent has also accepted taking the



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petitioners from their house at about 9.15 a.m on 08.05.2023. However, it is stated that the petitioners were taken from their house in connection with an enquiry on the complaint given by Edison @ Thomas Alva Edison, alleging life threat at the hands of the petitioners. It is stated in the affidavit filed by J.Revathy, Inspector of Police that the ill-feeling between Thomas Alva Edison on the one side and Thiagarajan and second petitioner Alex on the other side arose in connection with contesting 2019 Civic Election. It is not known when Edison @ Thomas Alva Edison gave a complaint against Thiagarajan and petitioner Alex. If any complaint is lodged by Edison @ Thomas Alva Edison, respondent police has not produced, the copy of the complaint alleging life threat from Thiagarajan and petitioner Alex, before this Court. Copy of the Memorandum issued by the Superintendent of Police, Nagapattinam with regard to the direction given for enquiring the life threat faced by Edison @ Thomas Alva Edison is also not produced before this Court. What is the need for an enquiry in 2023 on the basis of a complaint allegedly given in 2019 to 2022. In the said circumstances, this Court is not able to accept the case of the respondent that the petitioners were taken from their house at about 9.15 a.m on 08.05.2023 in connection



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with an enquiry in the matter of alleged life threat faced by Edison @ Thomas Alva Edison at the hands of Thiyaagu @ Thiagarajan and second petitioner Alex.

19. Undeniable fact is that the petitioners were taken from their residence at about 9.15 a.m on 08.05.2023 by the police. When it is claimed by the respondent that the petitioners were let off at 14.00 hours on 08.05.2023, it is their bounden duty to prove through acceptable evidence, like video footage from Velankanni Police Station or from nearby place, to show that the petitioners were really let off at 14.00 hours on 08.05.2023, after enquiry. However, no such evidence is produced. This failure on the part of respondent supports the case of the petitioners that this case is foisted against the petitioners by the respondent police, to keep them in jail. There is strong doubt created with regard to the genuineness of the case registered by the respondent police and it lends support to the case of the petitioners that the petitioners are falsely implicated in this case. When the possibility of false implication of the petitioners can not be ruled out, this Court is of the view that the petitioners are entitled for bail and it is not



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necessary for the petitioners to satisfy the twin conditions under Section 37 of NDPS Act. In this view of the matter, this Court is inclined to grant bail to the petitioners with conditions.

20. Accordingly, petitioners are ordered to be released on bail on each of them executing a bond for a sum of **Rs.25,000/- (Rupees Twenty Five thousand only)** with **two sureties** each for a like sum to the satisfaction of the learned Principal Special Judge, Special Court under EC & NDPS Act, 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] petitioners shall report before the respondent police daily at 10.30.a.m., until further orders.

[c] petitioners shall not abscond either during investigation or trial.



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[d] petitioners shall not tamper with evidence or witness either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners 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].

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

21. With the above conditions, this Criminal Original Petition is allowed.

mra

18.08.2023

Index :Yes/No

Internet:Yes

Speaking Order/Non-speaking Order

17/19



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WEB COPY To

1. The Principal Special Judge
Special Court under EC & NDPS Act
Chennai.
2. The Jail Superintendent
Central Prison
Puzhal
Chennai.
3. The Inspector of Police
N-1 Royapuram Police Station,
Chennai.
4. The Public Prosecutor,
Madras High Court,
Chennai.



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G.CHANDRASEKHARAN,J.

mra

order in
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