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Crl.OP.No.15783 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.OP.No. 15783 of 2023

C.Surendran

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Petitioner/Accused 1

Vs

Central represented by
The Intelligence Officer,
Narcotic Control Beureu (NCB)
South Zone, Chennai.

....

Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail concerned in C.C.No.299 of 2021 on the file of the II Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj
For Respondent : Mr.N.P.Kumar
Special Public Prosecutor (NCB)

ORDER

The petitioner, who was arrested and remanded to judicial custody on 27.04.2021 for the offences punishable under Sections 8(c) r/w 22(c), 28 and 29 of NDPS Act, in NCB.F.No.48/1/05/20-21 NCB-MDS on the file of the respondent police, seeks bail.



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2. The case of the prosecution is that on 24.04.2021, on information the respondent police went to M/s.DHL Express India Pvt. Ltd, a courier parcel booking office and checked a parcel and found four cricket hand gloves and four thigh guards. On examination of thing guard and after cut opening of a cloth layer, they found black polythene wrapped packet containing white crystalline powder believed to be Amphetamine and they seized 0.990 Kg of Amphetamine. On enquiry revealed that the petitioner and other accused tried to send the contraband to foreign country. Hence the complaint.

3. The learned counsel appearing for the petitioner submitted that even according to the case of the prosecution, one Jayamurugan was enquired and he stated that he accompanied with the second accused on his request, he dropped him in the curier office. On the way to courier office they bought one set of hand gloves. In the courier office, the second accused failed to provide the identity card and on his request, the said Jayamurugan gave his identity card and booked the parcel in his name. He never wisphered about the presence of the petitioner while sending the courier and the



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petitioner has been falsely implicated as accused in this case. He is nothing to do with the alleged offence and he has been implicated only on the confession statement of the second accused. The statement under Section 67 of the NDPS Act is not admissible one and except the statement, no other material to connect the petitioner with the allegations. He further submitted that even assuming that the confession statement is true, the hand gloves did not contain any contraband and the cricket thigh guard purchased by the second accused only contained the contraband. That apart, the petitioner arrested and remanded to judicial custody on 27.04.2021 and now charge sheet has been laid and the trial is pending. Therefore, he prayed to grant bail to the petitioner.

4. On perusal of counter affidavit filed by the respondent, the consignment was in possession of 0.990 grams white crystalline power believed to be Amphetamine and it was concealed in Cricket thigh guard, at M/s.DHL Express India Pvt. Ltd. Other than the confession statement, there was several phone calls between the petitioner and one Sam viz., the first accused herein, for purchase of the contraband and he used to send the same to foreign country. The petitioner is the main person behind the entire crime.



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Further it is a commercial quantity and the petitioner failed to fulfil the twin conditions as contemplate under Section 37 of the NDPS Act. Hence, he vehemently opposed to grant bail to the petitioner.

5. It is seen that this Court, while dismissing the bail application of the petitioner by an order dated 30.08.2022, directed the Trial Court to complete the trial within a period of six months from the date of receipt of a copy of the order. However, so far the charge itself has not been framed as against the petitioner. Similarly placed accused viz., A2 was granted bail by this Court by an order dated 27.02.2023 in Crl.O.P.No.3762 of 2023 on the ground that the accused was incarceration from the date of his arrest and after taking cognizance of the final report, there was no progress.

6. In this regard, the High Court of Calcutta, citing the judgment of the Hon'ble Supreme Court India, has held in the case of ***Ashok Shil @ Arun Vs. State of West Bengal*** in CRM(NDPS) 248 of 2022 dated 10.03.2022 as follows:

9. In Legal Aid Committee (supra) Hon'ble Apex Court before formulating directions, observed as follows:

" 21.Of Course, Some amount of deprivation



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of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by [Article 21](#) would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualized by [Article 21](#), which has to be telescoped with the right guaranteed by [Article 14](#) which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned Counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned Counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the



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huge pile of such cases. We, therefore, direct as under:....."

10. But, in view of the observation of the Hon'ble Apex Court, it is axiomatic that the right of an under trial guaranteed under [Article 21](#) of the Constitution of India cannot be ignored where prosecution is the sole author of delay.

7. Considering the above facts and circumstances of the case and also period of incarceration undergone by the petitioner from the date of his arrest viz., on 27.04.2021 and also non commencement of trial, this Court is inclined to grant bail to the petitioner.

8. Accordingly, the petitioner shall donate a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of the RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600034; Ph No.8939065431 and on such donation, 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 blood related sureties, each for a like sum to the satisfaction of the learned II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai and on further conditions that:



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[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 donate a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of the RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600034; Ph No.8939065431.

[c] the petitioner shall report before the trial Court i.e. learned II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai, daily at 10.30 a.m. and 05.30 p.m. until further orders.

[d] the petitioner shall not abscond either during investigation or trial.

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[g] 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]**.



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[h] If the accused thereafter absconds, a fresh FIR

can be registered under Section 229A IPC.

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To

1.The II Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai

2.The Intelligence Officer,
Narcotic Control Beureu (NCB)
South Zone, Chennai.

3.Central Prison, Puzhal.

4.The Public Prosecutor,
High Court of Madras,
Chennai



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G.K.ILANTHIRAIYAN, J.

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