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Crl.OP.No.16537 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

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

Crl.OP.No.16537 of 2023

Mohamed Mamunul Islam

..Petitioner

Vs.

The Inspector of Police,
J-9 Thuraipakkam Police Station,
Chennai.
(Crime No.110 of 2021)

..Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. pleaded to enlarge the petitioner on bail in C.C.No.197 of 2021 on the file of the II Additional Special Judge, NDPS Act, Chennai.

For Petitioner : Mr.T.S.Sasikumar

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Criminal Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody on 30.03.2021 at the hands of the respondent police for the offences punishable under Sections 8(c) r/w 20(b)(ii)(c), 29(1) of NDPS Act, 1985, in C.C.No.197 of 2021, on the file of the II Additional Special Judge, NDPS Act, Chennai, in



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connection with Crime No.110 of 2021, seeks bail.

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2. The case of the prosecution is that the petitioner and other accused were found in joint possession of 135 kgs of Ganja. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. There are totally three accused, in which the petitioner is arrayed as A3. As per the confession statement of the first accused, the petitioner has been falsely implicated in this case. Hence, he prays for grant of bail to the petitioner.

4. The learned Government Advocate (Criminal Side) would submit that there are totally three accused, in which the petitioner is arrayed as A3. The petitioner and other accused were found in joint possession of 135 kgs of Ganja. Hence, he vehemently opposed grant of bail to the petitioner.

5. It is seen that there are totally three accused, in which the petitioner is arrayed as A3. A1 and A2 were found in possession of 2 kgs of Ganja each and the petitioner was found in possession of 1 kg of Ganja. On the confession



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statement of the first accused, the respondent made search on their house and found 135 kgs of Ganja. Accordingly, the respondent completed the investigation and filed final report and the same has been taken cognizance in C.C.No.197 of 2021, on the file of the learned II Additional Special Judge, NDPS Act, Chennai. The petitioner repeatedly filed applications for bail and the same were dismissed by this Court on several occasions, on the ground that the petitioner failed to make out a prima facie case, in order to satisfy the twin conditions as contemplated under Section 37 of the NDPS Act, since the petitioner was found in conscious and constructive possession of contraband weighing 135 kgs and it is a commercial quantity. However, having been taken cognizance in the year 2021 in C.C.No.197 of 2021, even till today, the charges are not framed as against the accused persons. The petitioner is in incarceration imprisonment from the date of arrest i.e. 30.03.2021.

6. In this regard, it is relevant to extract the Judgment of the Hon'ble Supreme Court of India reported in **2023 LiveLaw (SC) 260** in the case of **Mohd Muslim @ Hussain Vs State (NCT of Delhi)**, wherein the Hon'ble Supreme Court of India held as follows:-

“ 18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is



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“not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of



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offences such as those enacted under Section 37 of the NDPS Act.

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20. *The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."*

7. Thus, it is clear that grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too.

8. Taking into consideration the facts of the case and the submissions made by the learned counsels and also taking note of the fact that the petitioner is in judicial custody from 30.03.2021, this Court is inclined to grant bail to the petitioner with certain conditions.

9. Accordingly, 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**



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Additional Special Judge, 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] the petitioner shall report before the learned II Additional Special Judge, NDPS Act, Chennai, in C.C.No.197 of 2021, daily at 10.30 a.m. and 5.30 p.m., till the completion of trial.

[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 absconds, a fresh FIR can be registered under Section 229A IPC.

26.07.2023

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To

- 1.The II Additional Special Judge, NDPS Act, Chennai.
- 2.The Inspector of Police,
J-9 Thuraipakkam Police Station,
Chennai.
3. Central Prison,
Puzhal-II, Chennai.
- 4.The Public Prosecutor,
High Court of Madras.



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G.K.ILANTHIRAIYAN, J.

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