



Crl.O.P.No.16918 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

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THE HON'BLE MR. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.16918 of 2023

1.Fazil

2.Abdul Manaf

...Petitioners

Vs.

The State Rep by Inspector of Police,

Devala Police Station,

Nilgiris District,

Crime No.146 of 2023.

...Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C. praying to enlarge the petitioners on bail in Crime No.146 of 2022, on the file of the respondent.

For Petitioner : Mr.G.Jaisivaramaraj

For Respondent : Mr.S.Rajakumar

Additional Public Prosecutor

ORDER

The petitioners, who were arrested and remanded to judicial custody on 10.06.2023 for the offences punishable under Sections 8(c), and 20(b)(ii)(B) of NDPS Act, 1985, in Crime No.146 of 2023, on the file of the respondent police, seek bail.



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2. It is the submission of the learned counsel for the petitioners that petitioners are accused of possession of 10 grams of MDMA (METHYLENEDIOXYMETHAMPHETAMINE). Even as per the FIR allegations, the contraband was seized from the first accused in his physical possession from his hip area. Therefore, it is doubtful whether the petitioners have knowledge about the possession of the contraband by the first accused. That apart, it is the submission of the learned counsel for the petitioner that it is declared by the official notification that 10 grams of MDMA is a commercial quantity. This is not correct for the reason that the High Court of Orissa in ***Anil Kumar Dash Vs. State of Orissa reported in 2015 SCC Online Ori 361*** observed that “*Where the contravention relates to sub-clause (b) of section 20 of the NDPS Act and the quantity but greater than small quantity which is punishable under Section 20(b)(ii)(B) of NDPS act and not under Section 20(b)(ii)(C) of NDPS Act*”.

2.1. Similarly, in the case before hand, it is claimed that 10 grams of MDMA was seized. It can be construed only as intermediate quantity



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and not as commercial quantity based on the reasonings given in the above said judgment. Section 2 (viia) of NDPS Act defines what is commercial quantity.

***Section 2.(viia)** “commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.*

As per this definition, any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette is categorised as commercial quantity. In the notification, it is given that 10 grams is commercial quantity. As per Section 2 (viia), only if the quantity exceeds 10 grams, it would be commercial quantity. Therefore, he seeks bail for the petitioners.

3.In response, the learned Additional Public Prosecutor opposed this petition on the ground that petitioners were in joint possession of the MDMA. Petitioners have no previous cases pending against them.

4.Considered the rival submissions and perused the records.



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5.The learned counsel for the petitioners canvasses this petition on two grounds:

(i) Petitioners were not aware of the possession of 10 grams of MDMA by the first accused for the reason that it was produced by him from the hip area, on apprehending him.

(ii) The contraband cannot be termed as commercial quantity. It is more than small quantity, but less than commercial quantity.

6.Reading of Section 2 (viia) and the aforesaid judgment gives a clear indication as to what is commercial quantity. It must be over and above the quantity indicated in the notification. Therefore, this Court is of the view that 10 grams of MDMA cannot be termed as commercial quantity. This Court also finds substance in the submission of the learned counsel for the petitioners that it is doubtful that the petitioners were aware of the possession of the contraband by the first accused. Contraband was recovered from the first accused on his production from his hip area, which was concealed there. Petitioners are in judicial



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custody from 10.06.2023. This is the first case registered against the petitioners under NDPS Act. Substantial part of the investigation might have been completed by this time. In the said circumstances, this Court is inclined to grant bail to the petitioners with conditions.

7. Accordingly, the petitioners are ordered to be released on bail on their executing separate 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 Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore** 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 petitioners shall report before the respondent police daily morning at 10.30 a.m., until further orders.

[c] the petitioners shall not abscond either during



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investigation or trial.

[d] the petitioners 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 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].

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

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To

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1. The Additional District Judge/Presiding Officer,
Special Court for Essential Commodities Act Cases,
Coimbatore.
2. The Inspector of Police,
Devala Police Station,
Nilgiris District,
Crime No.146 of 2023.
3. The Central Jail,
Coimbatore.
4. The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN. J.

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