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CrI.OP.No.17066 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

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

CrI.OP.No.17066 of 2023

Thothu @ Vinoth

... Petitioner/A5

Vs.

State rep by
The Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai
(crime No.1212 of 2021)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail pending trial in CC.No.38 of 2022 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai in respect of crime No.1212 of 2021 on the file of the respondent Police.

For Petitioner : Mr.D.Padmanabhan

For Respondent : Mr.R.Kishore Kumar,
Government Advocate
(crl.side)



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 29.09.2021 for the alleged offences punishable under Sections 8(c), 20(b)(ii)(b), 22(c), 25, 29(1) of NDPS Act, 1985 and 149 of IPC in Crime No.1212 of 2021 on the file of the respondent police, pending trial in CC.No.38 of 2022 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, seeks bail.

2. The case of the prosecution is that on 19.07.2021, the petitioner and 4 others were found in possession of Nitrovit – 10 tablets totally 1125 tablets (876 grams) and 1.500 Kgs of Ganja. The petitioner and another accused person escaped from the spot after seeing the respondent police and the property was seized from A1 & A2. In this case, charge sheet was already filed and the same is pending in C.C.No.38 of 2022 before the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.



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3. The learned counsel for the petitioner would submit that the petitioner is falsely implicated as an accused, that too only based on the confession statement of A1 and A2. The petitioner was never arrested by the respondent police and he himself surrendered before the Court and as such, the arrest report submitted by the respondent is false. Even according to the case of the prosecution, there was no recovery from the petitioner in respect of the alleged contraband. He further submitted that A1 and A2 were already arrested and released on bail in Crl.O.P.Nos.1762 of 2022 and 21862 of 2021. Therefore, as the petitioner has been implicated as an accused only on the confession statement of A1 & A2, the petitioner is also entitled for same benefits granted to the A1 & A2 herein. He also pointed out that the arrest report shows that the petitioner was arrested on 28.09.2021. Whereas the petitioner himself surrendered before the learned XV Metropolitan Magistrate, George Town, Chennai on 07.02.2022. Therefore, the entire case of the prosecution is false and prayed for bail. In support of his contention, he also relied upon the judgment of the Hon'ble Supreme Court of India in *State of West Bengal Vs. Rakesh Singh @ Rakesh*



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Kumar Singh in Crl.A.No.923 of 2022, in which the Hon'ble Supreme Court of India held that when the case against the accused of getting the contraband planted in question is prima facie disbelieved because of material available on record, the questions concerning possession of contraband, its quantity or financing are all rendered redundant. Therefore, the petitioner has got a good case to succeed in the trial and fulfilled the conditions as contemplated under Section 37 of NDPS Act.

4. Per contra, the learned Government Advocate(crl.side) objected for grant of bail to the petitioner.

5. On perusal of records, the petitioner is a habitual offender and he is a 'C' Grade accused. He has acquaintance with 'A' Grade accused those are drug peddlers. That apart, the petitioner is a history sheeter. Though the petitioner has been implicated as an accused on the confession statement of A1 & A2, A3 to A5 were also present in the scene of crime. When the respondent arrested the A1 and A2, A3 to A5 escaped from the scene of crime. That apart, the petitioner was originally



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arrested in pursuant to the registration of First Information Report in Crime No.1999 of 2021 on the file of the Inspector of Police, New Washermenpet Police Station on 11.09.2021. Thereafter, he was granted bail on 20.09.2021 on the file of the learned XV Metropolitan Magistrate, George Town, Chennai and the petitioner executed sureties on 05.10.2021 and he was released from prison on 07.10.2021. When he was in prison, formal arrest was shown by the respondent on 28.09.2021 and on perusal of the arrest report also revealed that the petitioner refused to sign in the arrest report. Therefore, the arrest as reported is formal one, since already the petitioner was arrested and he was released on bail by the Order dated 20.09.2021. Thereafter, in pursuant to the registration of present First Information Report, the petitioner surrendered and remanded to judicial custody. That apart, all the accused persons were in possession of 1.500 Kgs of Ganja and 1125 Nitravet – 10 tablets which contains 876 grams, which comes under commercial quantity and thereby, Section 37 of NDPS Act is applicable. The burden is on the accused to make out a case to satisfy this Court that there are reasonable grounds to believe that he is not guilty of such offence. The admissibility



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and evidentiary value of the confession recorded under Section 67 of NDPS Act can be decided only at the stage of trial and not at the stage of bail.

6. On perusal of entire records, it is further revealed that except the confession statement made by the co-accused, no other material produced to connect the petitioner along with other accused. Though the petitioner involved in 13 previous cases, all the cases are of offence under IPC. That apart, the petitioner is incarcerating imprisonment from the date of his arrest i.e. 07.02.2022. The crime is of the year 2021. Though charge sheet was laid and the same was taken cognizance in CC.No.38 of 2022 on the file of the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, the trial is not yet completed. That apart, other co-accused persons i.e. A1 to A4 were granted bail by this Court. Even according to the case of the prosecution, A1 and A2 were found in possession of contraband and as such, the petitioner made out a prima facie case in order to satisfy the twin conditions contemplated under Section 37 of NDPS Act.



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7. In view of the above, this Court is inclined to grant bail to the petitioner with certain conditions. Accordingly, the petitioner is ordered to be released on bail on his executing 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 I Additional Special Court for Exclusive Trial of Cases under 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 trial court i.e. learned Special Judge, I 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

(c) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(d) the petitioner shall not abscond either during investigation or trial;



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(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]; and;

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The learned Special Judge,
I Additional Special Court for Exclusive Trial of Cases under NDPS
Act, Chennai
- 2.The Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai
- 3.Puzhal Central Prison-II
- 4.The Public Prosecutor,
High Court, Madras

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