



WEB COPY



Crl.O.P.No.18115 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

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

Crl.O.P.No.18115 of 2023

Balakrishnan

...Petitioner

Vs.

Union of India
Through Intelligence Officer,
Narcotic Control Bureau,
Chennai Zone Unit,
Chennai.
(RR No.37 of 2021)

...Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. to enlarge the petitioner on bail in C.C.No.128 of 2022 on the file of the learned Special Judge for EC/NDPS Act Cases, Chennai.

For Petitioner : MrT.Balaji

For Respondent : Mr.S.Rajendra Kumar
Special Public Prosecutor
NCB Cases.



Crl.O.P.No.18115 of 2023

WEB COPY

ORDER

The petitioner, who was arrested and remanded to judicial custody on 06.12.2021 for the offences punishable under Section 8 (c) r/w 20 (b) (ii) (C) , 28 and 29 of NDPS Act in C.C No.128 of 2022 on the file of the learned Special Judge for EC/NDPS Act Cases, Chennai, seeks bail.

2.The learned counsel for the petitioner submitted that petitioner is A2 in R.R.No.37 of 2021 (in NCB F.No.48/1/14/2021-NCB/MDS) on the file of respondent. Petitioner is an innocent and he is falsely implicated in this case on the basis of confessional statement of co-accused. He has no role in connection with the procurement and transportation of Ganja. The allegation against the petitioner is that he financed for the procurement of Ganja is totally false. He is in judicial custody from 06.12.2021. Thus, he seeks bail.

3.In response, the learned Special Public Prosecutor (NCB Cases) submitted that respondent seized 642.100 kg of Ganja kept in an Eicher truck bearing registration No.TN-57-W-0591 on 04/05.12.2021 at



Crl.O.P.No.18115 of 2023

Karanodai toll plaza. Accused Kubendran, Balakrishnan and Rama were arrested in connection with the seizure of Ganja. During the course of investigation, it is revealed through the analysis of call data record of No.9843846397 that all the numbers are in the name of others, but all the call data shows that the calls frequently made with the accused persons Kubendran, Chelladurai, P.Jayam, and Rama vice versa. Petitioner called frequently his wife Nathiya in her mobile No.7708548597. His wife call details are given in paragraph No.6 of the counter. He also submitted that a sum of Rs.45,000/- on 20.11.2021 and Rs.55,000/- on 01.12.2021 were transferred by Nathiya to first accused Kubendran's Bank account in Axis bank account No.920010062643045 through G-pay. Thus, he strongly opposed this petition.

4.Considered the rival submissions and perused the records.

5.From the consideration of materials produced in this case, the allegations against this petitioner is that he was in contact with all the accused through phone and certain amounts had been transferred from



Crl.O.P.No.18115 of 2023

the account of his wife to the account of first accused. That apart, the confessional statement of this petitioner and co-accused are relied to implicate him. Now, it is settled proposition of law, that confessional statement recorded under Section 67 of NDPS Act is not admissible. May be that, there were phone conversations between this petitioner and other accused and certain amounts had been transferred from the account of the petitioner's wife Nathya to the first accused. From these materials we cannot now come to a definite conclusion that petitioner was involved in illegal procurement and transportation of Ganja. There is doubt whether petitioner had a role in the illegal procurement and transportation of Ganja. In the said circumstances, this Court is of the view that the rigor twin conditions contemplated under Section 37 of NDPS Act, is not applicable to the facts and circumstances of this case, especially to this petitioner. Co-accused in this case had already been granted bail. In such circumstances, this Court is inclined to grant bail to the petitioner with conditions.

6. Accordingly, petitioner is ordered to be released on bail on his



Crl.O.P.No.18115 of 2023

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 Special Judge for EC/NDPS Act Cases, 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 respondent daily at 10.00 a.m., until further orders.

[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.



WEB COPY



Crl.O.P.No.18115 of 2023

05.09.2023

ep

To

- 1.The learned Special Judge for EC/NDPS Act Cases, Chennai.
- 2.Central Prison,
Puzhal.
- 3.Union of India
Through Intelligence Officer,
Narcotic Control Bureau,
Chennai Zone Unit,
Chennai.
- 4.The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.18115 of 2023

G.CHANDRASEKHARAN. J.

ep

Crl.O.P.No.18115 of 2023



WEB COPY



CrI.O.P.No.18115 of 2023

05.09.2023