



Crl.O.P.No.20340 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2023

CORAM

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.20340 of 2023

Selvamani

... Petitioner

/versus/

The State of Tamil Nadu,
Represented by,
The Inspector of Police,
N-4, Fishing Harbour Police Station.

(Crime No.289 of 2022)

... Respondent

PRAYER : Criminal Original Petition filed under Section 439 of Criminal Procedure Code, pleaded to enlarge the petitioner on bail in Crime No.289 of 2022 on the file of the The Inspector of Police, N-4, Fishing Harbour Police Station, Chennai.

For Petitioner : Mr.R.Sivakumar

For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl.Side)



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ORDER

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The petitioner, who was arrested and remanded to judicial custody on 06.11.2022 for the offence punishable under Sections 8(c) r/w 22(c) & 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.289 of 2022, on the file of the respondent Police, seeks bail.

2. The case of the prosecution is that on 06.11.2022, on receipt of the secret information about illegal transport of narcotic substances, the respondent police conducted the search, during which, they found that the accused were in illegal possession of 66 grams of Methamphetamine. Hence the case.

3. Learned counsel appearing for the petitioner submitted that the petitioner (A3) is an innocent person, aged about 26 years and he has been falsely implicated in this case and this is his second application for bail. He further submitted that the petitioner is known to A2/Mohan Babu and other than that the petitioner was not aware of the possession of the contraband by A2. He also submitted that even the Mahazar would disclose that on enquiry A2 had taken out the contraband from his pant



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pocket and handed it over to the respondent Police and other than that absolutely there is no allegation against the petitioner that he had nexus with A2 in the illegal trade.

4. He further submitted that the fourth and fifth accused namely Pon Deepak and Baskar @ Thoppi Baskar respectively, from whom no recovery was made, have been granted bail by this Court in Crl.O.P.Nos.137 & 2524 of 2023 vide orders dated 11.01.2023 and 08.02.2023 respectively and further, one Ganesh Moorthy (A1) who is also stated to have been present at the scene of occurrence along with the petitioner has been granted bail by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.)No.3833 of 2023 dated 31.08.2023. He also submitted that investigation in this case has been completed and the final report has also been filed. Apart from this case, no case is pending against the petitioner. He also submitted that the petitioner is suffering long incarceration from 06.11.2022, hence, he prayed for grant of bail to the petitioner.

5. Learned Government Advocate (Crl.Side) appearing for the



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respondent Police submitted that the petitioner, who is arrayed as A3 in this case, and A2 became friends through social media application named Grindr – Gay. He further submitted that the petitioner and A2 are addicted to drugs and they have purchased the drugs from A1 from Bangalore through illegal application. He also submitted that this Court, taking into consideration that the petitioner has not satisfied the conditions required under Section 37 of NDPS Act, had dismissed the earlier bail application. He further submitted that the investigation in this case has been completed and the case has also been taken up on the file of the Special Court under EC & NDPS Act Cases, Chennai in C.C.No.274 of 2023. However, he opposed for grant of bail to the petitioner.

6. In reply, the learned counsel for the petitioner submitted that other than the confession statement, no other material is available to implicate the petitioner in the crime and he further reiterated that even as per the prosecution, the contraband is stated to have been recovered from the pant pocket of A2 and the petitioner was not aware of the possession by A2 in his pant pocket. Also, the similarly placed co-accused have been



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granted bail by this Court as well as by the Hon'ble Apex Court and thereby, the petitioner is entitled for bail on the ground of parity also. Hence, he prayed that the petitioner may also be enlarged on bail. Further, the learned counsel for the petitioner submitted that the petitioner, without prejudice to his defence and contention, is ready and willing to deposit an amount of Rs.20,000/- to any welfare scheme run by the Government.

7. Heard the learned Counsel for the Petitioner and the learned Government Advocate (Crl.Side) for the respondent Police and perused the materials available on record.

8. Earlier, this Court, taking into consideration the submissions made by the learned Government Advocate (Crl.Side), had dismissed the earlier bail application filed by this petitioner in Crl.O.P.No.6953 of 2023 by an order dated 17.04.2023. Now, it is stated by the petitioner that the recovery was effected only from A2 and it is also stated that there is nothing on record to show that the petitioner was aware of the possession of the contraband by A2 and also, the similarly placed co-accused have



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been granted bail by this Court as well as by the Hon'ble Supreme Court.

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9. Having gone through the records and the submissions made by the learned counsel on either side, this Court finds that the recovery was made only from A2 and other than the confession statement, no material is available as against the petitioner/A3 and also no previous is case pending against him. Thereby, this Court is of the opinion that the petitioner has complied with the conditions required under Section 37 of NDPS Act.

10. Taking into consideration the above facts and circumstances of the case and taking note of the fact that the similarly placed co-accused have been granted bail by this Court as well as by the Hon'ble Supreme Court and also considering the period of long incarceration undergone by the petitioner and the voluntary submission made by the petitioner to deposit Rs.20,000/- to any welfare scheme run by the Government, this Court is inclined to grant bail to the petitioner with certain conditions.

11. The petitioner is directed to deposit a sum of Rs.20,000/-



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(Rupees Twenty Thousand only) to the credit of "Rehoboth - Home for Mentally Challenged Homeless Women", without prejudice to his rights and contentions before the trial Court.

12. Merely, because the petitioner has deposited the said amount, it would not amount to admission of his guilt. Therefore, it is open to the trial Court to deal with the case independently.

13. Accordingly, the petitioner is ordered to be released on bail on condition to make a non-refundable deposit of **Rs.20,000/- (Rupees Twenty Thousand only)** directly to the credit of **"Rehoboth-Home for the Mentally Challenged Homeless Women, No.22, Viswas Nagar, Koluthuvancherri, Paraniaputhur, Chennai, vide Account of Rehoboth - Punjab National Bank, Moulivakkam Branch, A/c. No.05812010015060, IFSC Code : PUNB0058110, MICR Code : 600024081"**, without prejudice to his rights and contentions before the trial Court and on such deposit and production of proof, 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 sureties (out of**



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which, one shall be a blood related surety), each for a like sum to the satisfaction of the XVI Metropolitan Magistrate Court, George Town, 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 appear before the learned Judge, Special Court under EC & NDPS Act Cases, Chennai, on all working days at 10.30a.m., until further orders;

[c] the petitioner shall not abscond during trial;

[d] the petitioner shall not tamper with evidence or witness during 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]***;



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