



Crl.OP.No.20456 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

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

Crl.OP.No. 20456 of 2023

Boominathan

...Petitioner/A1

Vs

The State of Tamil Nadu
Reptd by its Intelligence Officer,
Directorate of Revenue Intelligence,
Chennai Zone Unit
No.27, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

F.No.DRI/CZU/VIII/48/ENQ-1/INT-25/2019 ...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail concerned in C.C.No.14 of 2020 on the file of the II Additional Special Court for EC & NDPS Act Cases, Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj
for Mr.R.Rajan

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor



Crl.OP.No.20456 of 2023

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ORDER

The petitioner, who was arrested and remanded to judicial custody on 28.07.2019 for the alleged offences punishable under Sections 22(c), 25, 27A, 28 and 29 r/w 8(C) of NDPS Act, pending trial in C.C.No.14 of 2020 in respect of F.No.DRI/CZU/VIII/48/ENQ-1/INT-25/2019 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 27.07.2019, on specific information, the respondent Police made surveillance check near Vanagaram Toll Booth and found the petitioner with two bags along with one Valli, and trying to board a bus. On examination, they found that the petitioner was in possession of 10.61 Kgs of Methamphetamine and nothing was found in Valli's bag. Hence, the complaint.

3. The learned counsel appearing for the petitioner submitted that there are totally two accused, in which the petitioner is arrayed as A1. The 2nd accused was arrested and subsequently, he was released on bail by the Hon'ble Supreme Court of India, considering the period of incarceration. As far as the petitioner is concerned, he was arrested and remanded to judicial



Crl.OP.No.20456 of 2023

custody on 28.07.2019. So far, the prosecution had examined only one witness as P.W.1. Though this Court directed the Trial Court to complete the trial within a period of six months in the earlier order, the Trial Court could not complete the trial within the time stipulated by this Court. Again, the petitioner filed another application for bail and the same was also dismissed by this Court, by an order dated 27.02.2023, and this Court directed the Trial Court to complete the trial within a period of six months. Even then, the Trial Court failed to complete the trial. Therefore, he vehemently contended that to consider the period of incarceration from the date of his arrest i.e., on 28.07.2019, on the very same ground, the 2nd accused was granted bail by the Hon'ble Supreme Court of India.

4. He further submitted that the respondent failed to follow the mandatory provisions as contemplated under Section 50 of the NDPS Act. In fact, the petitioner, along with one Valli, was about to travel in a Orange Travels Sleeper Bus from Chennai to Rameshwaram, the respondent intervened them and searched on them. Since no contraband was found in possession of the said Valli, she was not arrested and she was not implicated in this case. In fact, she was not even shown as witness by the prosecution.



Crl.OP.No.20456 of 2023

The case of the prosecution is that the 2nd accused only handed over the contraband and transit the same to Rameshwaram. Further, the petitioner has no previous antecedents. Hence, he prays for grant of bail to the petitioner.

5. Per contra, the learned Special Public Prosecutor filed counter and submitted that there are totally two accused, in which the petitioner is arrayed as A1. Though A2 was granted bail by the Hon'ble Supreme Court of India, he is standing in the defence footing, since no recovery was made from the 2nd accused and considering the period of incarceration, he was granted bail by the Hon'ble Supreme Court of India. That apart, the respondent complied with the provision under Section 50 of the NDPS Act, while they made search on them. Though the said Valli accompanied the petitioner, she had no knowledge about the contraband which was found in possession of the petitioner herein. Therefore, she was not cited as witness in this case. Insofar as the trial is concerned, the petitioner had examined P.W.1 only on 17.07.2023. For the past 15 hearings, the petitioner sought for time to cross examine P.W.1. In fact, the petitioner/A2, even today, failed to cross examine P.W.1. Therefore, the delay had occurred only due to the accused and not by the prosecution. He further submitted that the



Crl.OP.No.20456 of 2023

petitioner was found in possession of 10.61 Kgs of Methamphetamine and it is a “commercial quantity”. Therefore, he vehemently opposed to grant bail to the petitioner.

6. It is seen that there are totally two accused, in which the petitioner is arrayed as A1. The 2nd accused was granted bail by the Hon'ble Supreme Court of India, by an order dated 19.04.2022 in Special Leave to Appeal (Crl) No.8772 of 2021, considering the period of incarceration. The petitioner was arrested and remanded to judicial custody from 28.07.2019. Even though, this Court directed the Trial Court to complete the trial within a period of six months on two occasions, the Trial Court could not complete the trial for one after another reasons. So far the prosecution had examined only one witness as P.W.1. On perusal of records, 19 witnesses have been examined on their side.

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 “not guilty of such offence” and that he is not likely to



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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 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. In view of the above dictum laid down by the Hon'ble Supreme Court of India and the co-accused was already granted bail by the Hon'ble Supreme Court of India and also taking note of the fact that the petitioner is in judicial custody from 28.07.2019 and the petitioner had no previous bad antecedents, this Court is inclined to grant bail to the petitioner with certain conditions.

8. Accordingly, the petitioner shall donate a sum of Rs.50,000/-



CrI.OP.No.20456 of 2023

(Rupees Fifty Thousand only) to the credit of the RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600034; Ph No.8939065431 and on such donation, 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 Additional 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 donate a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of the RAY OF LIGHT FOUNDATION; A/c No : 50100078904233; IFSC code : HDFC0001864; No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600034; Ph No.8939065431.

[c] the petitioner shall report before the trial Court i.e. learned II Additional Special Judge for EC & NDPS Act Cases, Chennai daily at 10.30 a.m. and 05.30 p.m. until further orders.

[d] the petitioner shall not abscond either during



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Crl.OP.No.20456 of 2023

investigation or trial.

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[g] 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]**.

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

20.09.2023

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To

1.The II Additional Special Judge for EC & NDPS Act Cases, Chennai.

2. The Intelligence Officer,
State of Tamil Nadu,
Directorate of Revenue Intelligence,
Chennai Zone Unit
No.27, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

3.Central Prison, Chennai

4.The Public Prosecutor,
High Court of Madras, Chennai



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CrI.OP.No.20456 of 2023

G.K.ILANTHIRAIYAN, J.

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CrI.O.P.No.20456 of 2023

20.09.2023