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Crl.O.P.No.21830 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM

THE HON'BLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.21830 of 2023

Kishore Kumar @ Kishore

...Petitioner

Vs.

State Rep. By
The Inspector of Police,
M-4 Redhills Police Station,
Chennai.
(Cr.No.75/2023)

...Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. to enlarge the accused/petitioner on bail pending investigation in M-4 PS Cr.No.75/2023 on the file of the respondent police.

For petitioner : Mr.B.Shankar
For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 16.06.2023 for the offence punishable under Sections 8(c),



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20(b)(ii)(C) & 29(1) of NDPS Act in Crime No.75 of 2023 on the file of the respondent police, seeks bail.

2. The learned counsel for the petitioner submitted that petitioner is falsely implicated in this case, in Crime No.75 of 2023 for the offence under Sections 8(c), 20(b)(ii)(C) & 29(1) of NDPS Act. There was no recovery of contraband from the petitioner. The petitioner is implicated in this case on the basis of the confession statement of the co-accused. The petitioner is in judicial custody from 16.06.2023. Thus, he seeks bail.

3. In reply, the learned Additional Public Prosecutor opposes this petition, on the ground that, on 18.02.2023, based on the secret information received by the *de-facto* complainant, he mounted a surveillance along with a police party at Lakshmipuram Pothur Alamaram. At about 09.00 a.m., they found two persons with white colour polythene bags. There are 1) Pasupathi and 2) Malarvanan. After following the necessary procedure, a search was conducted. During the search, they found 30 Kgs of ganja in the white sack carried by Pasupathi and the ganja was seized. Thereafter, this case was



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registered.

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4. From the consideration of the FIR allegations and the submissions of the learned counsel appearing for the parties, though it is a case where this petitioner is implicated on the basis of the confessional statement of the co-accused, there is no recovery of contraband from the petitioner. In the said circumstances, this Court is of the view that the twin conditions under Section 37 of NDPS act is not applicable to the petitioner.

5. Considering the fact that the petitioner is implicated only on the basis of the confession statement of the co-accused and that there is no recovery of contraband from the petitioner and that the petitioner is in judicial custody from 16.06.2023, this Court is of the view that petitioner may be released on bail with conditions.

6. Accordingly, the petitioner is ordered to be released on bail on his 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 Judicial Magistrate-II, Ponneri**, and on further conditions that :-



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[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 without prejudice to his defence shall deposit a non-refundable sum of Rs.10,000/-, by way of Demand Draft to the Chief Minister's Public Relief Fund, Finance (CMPRF) Department, Government of Tamil Nadu, Secretariat, Chennai 600 009, Tamil Nadu, India, Indian Overseas Bank, Secretariat Branch, Chennai 600 009, S.B.Account No.11720 10000 00070, IFS Code IOBA0001172, CMPRF PAN: AAAGC0038F and that the receipt of such payment shall be produced before the concerned Magistrate at the time of executing the bond; It is made clear that merely, because the petitioner deposits 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.

[c] the petitioner shall report before the respondent police daily at 10.30 a.m., until further orders.

[d] the petitioner shall not abscond either during investigation or trial.



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

[f] 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].

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

22.09.2023

mpl



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G.CHANDRASEKHARAN, J.

mpl

To

1. The Judicial Magistrate-II,
Ponneri.
2. The Inspector of Police,
M-4 Redhills Police Station,
Chennai.
3. Central Prison for Men,
Puzhal, Chennai.
4. The Public Prosecutor,
High court of Madras.

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