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CrI.O.P.No.23490 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

**THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN**

CrI.O.P.No.23490 of 2023

Raju

... Petitioner/A1

Vs.

The Intelligence Officer,  
Directorate of Revenue Intelligence,  
Chennai Zonal Unit,  
27, G.N.Chetty Road, T.Nagar,  
Chennai, Tamil Nadu – 600 017.

... Respondent

**PRAYER:** Criminal Original Petition filed under Section 439 of Cr.P.C.,  
prayed to enlarge the petitioner on bail in C.C.No.75 of 2019 pending trial  
before the learned I Additional Special Court for NDPS Act cases at  
Chennai.

For Petitioner : Mr.J.Asokan

For Respondent : Mr.N.P.Kumar, Spl. Public Prosecutor



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## **ORDER**

The petitioner/A1 who was arrested and remanded to judicial custody on 22.09.2018 for the offences punishable under Sections 8(C) r/w 20(b)(ii)(c), 25, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 in C.C.No.75 of 2019 on the file of the I Additional Special Court for NDPS Act, Cases, Chennai, seeks bail.

2.It is stated that the trial had been progressing not smoothly but adjournments have been granted for various reasons.

3. It is the grievance of the learned Special Public Prosecutor that prosecution had examined PW-1 to PW-6, but none of the prosecution witnesses were cross-examined immediately on any subsequent dates, but after chief examination had been conducted of all the said witnesses, applications were filed separately and independently to recall each one of the witnesses and thereafter witnesses were cross-examined.



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4.The learned counsel for the petitioner stated that, as on date all the prosecution witnesses had been examined and cross-examined except PW-5 and PW-6. The matter is now listed on 16.11.2023 for cross-examination of PW-5. The learned counsel for the petitioner had placed reliance on an order of the Hon'ble Supreme Court with respect to the 2<sup>nd</sup> accused, ***D.Ramesh Vs. the Intelligence Officer, Directorate of Revenue Intelligence in Special Leave to Appeal (Crl.) No. 5977 of 2023***, wherein by an order dated ***13.07.2023***, the Hon'ble Supreme Court with respect to the 2<sup>nd</sup> accused had observed as follows.

Let me reproduce the entire order for clarity:

*“1.This is a petition seeking bail.*

*2.Heard Ms. Haripriya Padmanabhan, learned counsel appearing for the petitioner and Mr.K.M.Nataraj, learned Additional Solicitor General appearing for the respondent.*

*3.Mr.K.M.Nataraj, learned Additional Solicitor General appearing for the respondent vehemently opposes the petition on the ground that huge quantity of Ganja seized from the applicant/petitioner.*

*4.However, taking into consideration the fact that the petitioner has been incarcerated for a period of almost five years, we are inclined to grant bail.*

*5.The petitioner is directed to be released on bail in connection with Calender Case No.75 f 2019 on such terms and conditions as may be imposed by the learned Trial Court.*



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*6.The special leave petition is, accordingly, disposed of.*

*7.Pending application (s), if any, shall stand disposed of.”*

5.The learned Special Public Prosecutor however, again raised very strong objections claiming that nearly about 230 Kgs of Ganja had been transported in a car and the contraband had been seized and that the trial is at a very crucial stage.

6.This Court will now have to balance the order of the Hon'ble Supreme Court and the observation therein, where A2 had been granted bail on the observation that, he had been incarcerated for a period of five years and the observation of the Hon'ble Supreme Court in **2023 SCC OnLine SC 346, Union of India Vs. Ajay Kumar Singh alias Pappu**, wherein, the Hon'ble Supreme Court had stated that consideration of bail should be on the basis of Section 37 of NDPS Act, 1985, examining whether there would be possibility of acquittal.

7.But however, since trial is in progress, it would be extremely injudicious on the part of this Court to enter into any discussion of either acquittal or conviction.



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8. In the present case, it would all depend upon the evidence which had been already let in and the evidence, which is yet to be let in and analysis of such evidence, which would include chief examination and cross-examination of the witnesses of the prosecution. There could also be possibility of the accused leading evidence and that particular evidence will also have to be examined on the basis of probabilities.

9. The learned Special Public Prosecutor stated that after examination PW-5 and PW-6, the prosecution has two further witnesses to be examined.

10. In view of these facts and balancing the fact that the 2<sup>nd</sup> accused had been granted bail and taking into consideration the period of incarceration and admittedly, the petitioner herein suffering a longer period of incarceration, I would, without entering into any discussion on the rigor of Section 37 of NDPS Act, only because the trial is in progress and any discussion would be a discussion on the evidence already recorded, which would certainly impinge on the mind of the learned trial Judge, and therefore specifically avoiding such discussion, this Court is inclined to grant bail to the petitioner, but however, directing the learned I Additional Special Judge for Exclusive Trial of Cases



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under NDPS Act, Chennai to adhere to the following directions to ensure that the trial is completed.

(i) The learned trial Judge may adjourn the matter once in every three working days. Cross-examination of PW-5 and PW-6 may be recorded and if it is found that the learned counsel for the accused are dragging on the matter, then the learned trial Judge is at liberty to state that there has been violation of condition imposed by this Court and remand the accused back to custody.

(ii) On the side of the accused, only three chances can be given to cross-examine the witnesses, who are produced and within the three dates cross-examination should be completed. As stated, adjournments should not exceed more than three working days. Thereafter, the prosecution may also examine the two further witnesses, with a gap of three working days, the witnesses should also be examined.

11.If the trial is conducted in the above manner, restricting the dates between adjournments, then the trial can be completed within a reasonable period of time. The learned trial Judge may endeavour to complete the trial on



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or before 31.01.2024. With the above conditions, the learned trial Judge is also given the liberty to interfere with this order and remand the petitioner herein to custody, if there is deliberate delay in cross-examining the witnesses.

12. Accordingly, the petitioner is ordered to be released on bail on executing a separate bond for a sum of Rs.1,00,000/- (Rupees One Lakhs only) with two sureties, each for a like sum to the satisfaction of the learned I Additional Special Court for 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 appear before the trial Court on every Monday, Wednesday and Friday at 10.30 a.m till completion of trial apart from Court hearing dates.**

[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.



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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].

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

**07.11.2023**

smv

To

1. The I Additional Special Court for NDPS Act, Cases, Chennai.
2. The Intelligence Officer,  
Directorate of Revenue Intelligence,  
Chennai Zonal Unit,  
27, G.N.Chetty Road, T.Nagar,  
Chennai, Tamil Nadu – 600 017.
3. The Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,  
High Court of Madras.



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**C.V.KARTHIKEYAN, J.**

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