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Crl.O.P.No. 24174 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE RESERVED : 01.12.2023

DATED : 08.12.2023

CORAM

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

Crl.O.P.No.24174 of 2023

Muhammed Arshad ... Petitioner/3rd Accused

Vs.

The State represented by
The Inspector of Police
Sulur Police Station
(Crime Number 330 of 2023) ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleased to enlarge the petitioner on bail, concerned in Crime Number 330 of
2023 (on the file of the respondent police) on such terms and conditions as
this Hon'ble High Court.

For Petitioner : Ms. S.Naveenha Devi

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)



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ORDER

The petitioner/A3, who was arrested and remanded to judicial custody on 17.05.2023, in Crime No. 330 of 2023 registered for the offences under Sections 8(c), 22(c) and 29(1) of NDPS Act, seeks bail.

2. The earlier applications for bail had been dismissed by this Court on 26.09.2023.

3. The learned counsel for the petitioner pointed out that the petitioner was standing along with A1 and A2. From the possession of A1, the respondent recovered 60 grams of Methamphetamine in a plastic cover. The present petitioner has his address in Kerala and A1 has an address in Coimbatore but native of Kerala. The contention of the learned counsel for the petitioner is that the petitioner does not understand Tamil and this particular recovery from A1 was translated from Tamil to Malayalam by A1. There has been no recovery from A3.



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4. The second aspect placed by the learned counsel for the petitioner is that the FSL report had not been filed.

5. It is stated that the Rules prescribes that it should be filed within a period of 15 days.

6. But it is the specific case of the respondent that FSL report had been annexed along with final report and had been filed before the jurisdictional Court.

7. The main contention of the learned counsel for the petitioner is that the petitioner and the second accused were standing near to the first accused more out of coincidence, than with knowledge that the first accused was in possession of 60 grams of methamphetamine.

8. It is also contended that the petitioner is a student of Hindustan Arts and Science College at Coimbatore. The contraband had been recovered only from the first accused and not from the petitioner herein. It is therefore contended that there are reasonable grounds to believe that the petitioner is not guilty of the offences alleged.



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9. On the other hand, it is the contention of the learned Government Advocate (Crl. Side) that all the three accused were in conscious possession of the total contraband of 60 grams of Meth @ Methamphetamine and therefore, it was urged that since it was commercial quantity, bail should be rejected.

10. I have carefully considered the arguments advanced.

11. The issue relating to furnishing of FSL report is a matter of trial and at this stage, the Court cannot examine the same in the absence of records and even if records are made available, without them being put to the tests of admissibility and proof.

12. The primary contention of the learned counsel for the petitioner is that the petitioner was not in physical possession of the seized contraband and that therefore, this Court should hold that there is a reasonable ground to believe that the petitioner was not guilty of the charges alleged.



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13. It must be kept in mind that the contraband seized was of commercial quantity.

14. In view of the stipulations under Section 37 of the NDPS Act, before granting bail for an offence under NDPS Act twin conditions as provided under Section 37(1)(b) (i) and (ii) have to be satisfied. Section 37 of the N.D.P.S. Act is quoted herein below:

"37. Offences to be cognizable and non-bailable. -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-



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(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

15. The Hon'ble Supreme Court had examined the expression 'reasonable grounds' as found in Section 37(1)(b)(ii) of NDPS, Act.

16. In *Union of India Vs. Rattan Mallik @ Habul, 2009 (1) SCC (CrI) 831*, the Hon'ble Supreme Court had settled the expression "*reasonable grounds*". The relevant paragraphs Nos.12, 13 and 14 are extracted below:

"12. It is plain from a bare reading of



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the nonobstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub- section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie



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grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief

contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari, 2007(7) SCC 798] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is



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charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."

17. The Hon'ble Supreme Court while dealing with the question of possession and application of Section 50 in the case of **Megh Singh Vs. State of Punjab, 2003 CRI. L.J. 4329**, held that the word '*possession*' includes '*conscious possession*'. Relevant paragraph nos. 9 to 13 are extracted below:

"9. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52), to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.



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10. *The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.*

11. *As noted in **Gunwantlal v. The State of M.P. (AIR 1972 SC 1756)** possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.*

12. *The word 'possession' means the legal right to possession (See **Health v. Drown (1972) (2) All ER 561 (HL)**). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See **Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD)**).*

13. *Once possession is established the person who claims that it was not a conscious*



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*possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in **Madan Lal and Anr. v. State of Himachal Pradesh (2003 (6) SCALE 483).**”*

18. The Hon'ble Supreme Court in the case of **Dehal Singh vs. State of Himanchal Pradesh, 2011 (72) ACC 661**, had again considered the concept of "*conscious possession*". In the said case, two accused persons were travelling in a car and they knew each other. From the windows/door of the said car, recovery of 27 Kgs. 800 gms. of charas was made, which were found concealed between the shields and doors of the car. The Hon'ble Supreme Court in the said case, taking into consideration the provisions of Sections 35 and 54 of the N.D.P.S. Act had held that the accused were not only in possession, but in conscious possession of the recovered contraband also.



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19. It is thus seen that the Hon'ble Supreme Court had expanded the term possession to also include not just physical possession and constructive possession but also conscious possession.

20. In the instant case, all the three accused were in conscious possession of 60 grams of Meth @ Methamphetamine which was recovered, no doubt only from the first accused but on the confession of the first accused, wherein it had been stated that the contraband was meant for sale to the present petitioner, who had purchased it.

21. The learned counsel for the petitioner then contended that the petitioner could be imposed with directions to make his location available through mobile phone by pairing it with the mobile phone of the investigating Officer round the clock. This may not be a viable option in this case as the petitioner can always abscond to Kerala which is his native place.



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22. In view of these circumstances, I am not able to convince myself to grant bail. Hence, this Petition stands dismissed.

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vsg

Index: yes/no

Internet: Yes/no

To

1. The Inspector of Police
Sulur Police Station.
2. The Public Prosecutor,
High Court of Madras.



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C.V.KARTHIKEYAN, J.

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**Pre-Delivery Order made in
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