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Crl.OP.No.31672 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

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

Crl.OP.No.31672 of 2022

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Petitioner

Vs

The State represented by
The Inspector of Police,
H-5, New Washermanpet Police Station,
Chennai – 600 081.
(Crime No.4482 of 2020)

...

Respondent

PRAYER:Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in Crime No.4482 of 2020 on the file of the respondent police and pending trial in C.C.134 of 2021 on the file of the II Additional Special Court for NDPS Act, Chennai.

For Petitioner : Mr.M.Udhayakumar
For Respondent : Mr.V.J.Priyadarsana
Government Advocate (Crl.Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody on 18.12.2020 for the alleged offence punishable under Section 8(c) r/w 20(b)(ii)(C) of NDPS Act 1985 in Crime No. 4482 of 2020 on the file of the



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respondent police and pending trial in C.C.134 of 2021 on the file of the
II Additional Special Court for NDPS Act, Chennai, seeks bail.

2. The case of the prosecution is that on 18.12.2020 at 18.30 hours, the respondent police received a secret information about the illegal sale of narcotic substances i.e., Ganja. Immediately, the respondent police conducted searching in Vaithyanathan Street and Illaya Street corner. At that time, one person viz., Jallaluthin/A1/Petitioner herein, came in TATA AC car bearing registration No.TN-18-AX-6898. The respondent police found that the accused had illegally transported 22 Kgs of Ganja, which comes under commercial quantity. Immediately, the respondent police arrested the accused person and recorded his confession statement. His confession statement revealed that he transported Ganja along with Dhinesh Kumar/A2 and Kali/A3. Thereafter, the respondent police searched A2's house and found 22 Kgs of Ganja. It was learnt that A2 used to separate the Ganja in small bags and give it to A3 for illegal sale. The respondent police found 2 Kgs of Ganja in possession of A3. Thereafter, the respondent police arrested A2 and A3 and seized 46 Kgs of Ganja from them, under the cover of seizure mahazar, in the presence of police witnesses.



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3. There are totally three accused, in which the petitioner is arrayed as A1. According to the prosecution, the petitioner was in possession of 22 Kgs of Ganja in TATA AC Car bearing Registration No.TN-18-AX-6898. The second accused was in possession of Ganja weighing 22 Kgs. A3 was in possession of 2 Kgs of Ganja. All travelled in the same car. Now the respondent police filed charge sheet and the same has been taken cognizance in C.C.No.134 of 2021 on the file of the Special Court II Additional Judge under EC & NDPS Act, Chennai. Sofar the prosecution did not even examine any witness. Therefore, the second accused filed an application for bail and the same was considered by this Court and he was granted bail in Crl.O.P.No.30574 of 2022 on 16.12.2022.

4. The learned counsel appearing for the petitioner vehemently contended that the petitioner was arrested and remanded to judicial custody on 18.12.2020 and for the past more than 2 years he is in incarceration without any further progress in the trial. He also relied upon the Judgement of the Hon'ble Supreme Court of India, in which the Hon'ble Supreme Court of India held that taking into consideration the period of sentence undergone by the accused and all the attending circumstances but without expressing



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any views in the merits of the case and due to non completion of trial, granted bail. In the case on hand, admittedly, the prosecution did not even examine any witness so far. This Court has also considered the application of the second accused for bail only on the ground that the he was in imprisonment for more than two years. The petitioner is also in incarceration from the date of arrest i.e., 18.12.2020. Though the respondent filed final report and the same has been taken cognizance, the Trial has not commenced so far.

5. Considering the facts and circumstances of the case and without going into the merits of the case, this Court is inclined to grant bail to the petitioner only on the ground that he is in incarceration imprisonment for more than two years and even today, the prosecution had not begun the trial so far.

6. Accordingly, the petitioner shall donate a sum of Rs.25,000/- (Rupees Twenty Five 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;



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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 **Special Court II Additional Judge under EC & NDPS Act, 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.25,000/- (Rupees Twenty Five 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 that the receipt of such donation shall be produced before the concerned Magistrate at the time of executing the bond;

[c] the petitioner shall report before the Trial Court daily Morning at 10.30 a.m., and Evening 05.30 p.m, until further orders.

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

[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



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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.

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To

1.The Special Court II Additional Judge under EC & NDPS Act,
Chennai.

2.The Inspector of Police,
H-5, New Washermanpet Police Station,
Chennai – 600 081.

3. Central Prison,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court of Madras.



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G.K.ILANTHIRAIYAN, J.

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