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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 05/04/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.OP(MD)No.2636 of 2023

Sakthi @ Sakthiyendran : Petitioner/A3

Vs.

State rep. by Inspector of Police,
Keerathurai Police Station,
Madurai City.

(Crime No.413 of 2021) : Respondent/Complainant

PRAYER:- This Criminal Original Petition has been filed under section 407 of the Criminal Procedure Code, to withdraw the case in CC No.17 of 2022 on the file of the Special II Additional District Court for NDPS cases, Madurai and transfer the same to any other court and pass such further or other orders.

For Petitioner : Mr.S.Karuppasamy Pandian
for Mr.J.Vijayaraja

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

**O R D E R**

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This criminal original petition has been filed seeking to withdraw the case in CC No.17 of 2022 on the file of the Special II Additional District Court for NDPS cases, Madurai and transfer the same to any other court.

2.The facts in brief:-

This petitioner is facing the charges under sections 8(c) r/w 20(b)(ii)(c), 25, 29(1) of NDPS Act and section 25(1-B)(b) of Arms Act. On the basis of the complaint given by the de-facto complainant, the case was registered in Crime No.413 of 2021, on 08/07/2021. He was arrested and remanded to judicial custody, on 09/07/2022. Ever-since he is in custody. Now after completion of the investigation, final report was filed and taken cognizance by the Special Court in CC No.17 of 2022 showing him as A3. Trial has commenced and now 313 Cr.P.C proceedings is pending.

3.Now making some sort of allegation against the Presiding Officer with regard to the court proceedings, this transfer petition has been filed.



4. Heard both sides.

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5. We need not go in deep over the allegation that has been made by the petitioner in the petition. A report has been called from the trial court and the report has been received. A detailed report has sent. Para 20, 21, 22 and 23 are extracted hereunder to understand the issue:-

"20. When the accused were to be questioned U/s. 313 of Cr.P.C., the Petitioner herein has filed an application U/s. 309 of Cr.P.C., to stall the 313 questioning. He was advised that section 309 is applicable only to adjourn the case during the trial and he cannot stop the Court from questioning the accused through 309 of Cr.P.C. But the advocate was rude enough and was not inclined to hear what said to him. Further the prayer in the 309 Application was to adjourn the trial of CC 17/2022 without any time limit and for an indefinite period. As trial was completed this court has dismissed the said application.

21. When the Petitioner files an application for deferring the cross-



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that the staff who was assigned the duty of indexing the bundles and transfer the same from the Principal Court to the Additional Court is not alive and this was also informed to him. In-spite of it, it is alleged as one of the ground for prejudice, which in fact cannot exist.

23.I humbly submit if such application are entertained then all the accused would resort to such practice at the fag end of the trial, which would disable the court which has recorded the evidence and which had noted the demeanor of the witness. I humbly submit that having committed all these unwanted acts, the attitude of the counsel to blame the court, in my humble view, should not be encouraged or entertained. I further humbly submit that this court has been discharging its duty with utmost interiority and with social consciousness."

6.A reading of this report shows that the accused as well as the learned counsel on record made all attempts to drag on the proceedings by making some sort of allegation against the Presiding Officer. But all those allegations are found to be not true in the light



7. In the light of the above said report, this court is of the considered view that not only the attempt of the petitioner cannot be encouraged.

8. Smelling this problem, the learned counsel appearing for the petitioner has submitted before the court, at the time of argument, he was referring to the order passed by the Presiding Officer in CrI.MP No.1206 of 2022, dated 14/11/2022. That application was filed under section 91 of the Criminal Procedure Code seeking direction to the Station House Officer, Keelakarai Police Station, to produce the CCTV footage recorded on 08/07/2021 between 04.00 pm and 10.00 pm. It is also recorded by the Presiding Officer in the above said report. That was also dismissed. But para 8 of the order creates some problem, which would run thus:-

"8. Further even according to the
Petitioner, he was found at his office at
13.55 hours and the Police had registered



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a case as if the Petitioner was found in the car with the first accused with the contraband at 2.30 p.m. In between 35 minutes is there. There is every possibility that the petitioner could have joined the first accused midway and it is not the prosecution case that this petitioner travelled along with other accused right from the starting point of the journey. These are matters that should be proved during the trial that is during the cross examination of the witnesses. Therefore without resorting to such practice this Court holds the petitioner cannot compel the Investigation officer to produce them which is not with them."

9. When this paragraph was shown to be, at the time of hearing, this court was totally helpless, except the order of transfer of the trial process to some other courts, even though observed in the last 3 lines that these things are the matters for consideration during



trial. But the earlier sentence and the observation was standing in support of the case of the defence.

10. According to the learned counsel appearing for the petitioner, this shows preconceived notion of the Presiding Officer. On the sole ground, let the above said trial process be transferred to the Principal Additional District Judge for NDPS Act cases, Madurai.

11. In the result, this criminal original petition is **allowed** and the case in CC No.17 of 2022 on the file of the Special II Additional District Court for NDPS cases, Madurai is withdrawn and transferred to Principal Additional District Judge for NDPS Act cases, Madurai.

05/04/2023

Index:Yes/No
Internet:Yes/No

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WEB COPY To,

- 1.The Special II Additional District Court for NDPS Act cases, Madurai.
- 2.The Principal Additional District Judge for NDPS Act cases, Madurai.
- 3.The Inspector of Police, Keerathurai Police Station, Madurai City.
- 4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN, J



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