



WEB COPY



Crl.O.P.No. 792 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2024

PRONOUNCED ON : 28.02.2024

CORAM

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

Crl.O.P.No. 792 of 2024

Pandiswaran

... Petitioner/Accused No.2

Vs.

State represented by
The Inspector of Police
NIB CID Police Station
Kancheepuram.
Cr.No. 22 of 2022.

... Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail pending trial in C.C.No. 557 of 2022
on the file of I Additional Special Judge for NDPS Act cases at Chennai.

For Petitioner : Mr. O.Chembulingam

For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)



WEB COPY



CrI.O.P.No. 792 of 2024

ORDER

The second accused in C.C.No. 557 of 2022 pending before the I Additional Special Court for NDPS Act Cases at Chennai, seeks bail.

2. Originally, Cr.No. 22 of 2022 had been registered by the respondent for offences under Section 8(c) read with 20(b)(ii)(C), 25 and 29(i) of NDPS Act. The petitioner was remanded to judicial custody on 25.08.2022.

3. It is the case of the prosecution that the respondent received information that at Keelambi Junction, Bangalore National Highways, two persons were come in a car bearing Reg.No. Tamil Nadu-09-AT-1566, TATA Spacio Car with ganja from Andhra Pradesh and travelling to Theni. The car was intercepted and the respondent found 2- packets with each packet containing 2 kgs of Ganja, totally 20 kgs. The entire seizure was 60 kgs of Ganja. The petitioner was the driver of the vehicle and he was remanded to judicial custody. The earlier application seeking bail in CrI.O.P.No. 11295 of 2023 had been dismissed on 09.06.2023 as not pressed.



CrI.O.P.No. 792 of 2024

WEB COPY

4. After completing investigation, the respondent had filed final report which had been taken cognizance as C.C.No. 557 of 2022 and trial is in progress before the I Additional Special Court, NDPS Act, Chennai. The charges have been framed. PW-1 Inspector of Police had been examined in chief and also cross examined in part on behalf of the petitioner herein. The cross examination has not yet been completed. It is posted for continuation of cross examination. The witness has not been cross examined on behalf of the first accused.

5. The learned counsel for the petitioner placed reliance on the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 published in the Gazette of India on 23.12.2022. He specifically drew attention of this Court to Rule No.10 which is as follows:-

“10. Drawing the Samples.- (1) One sample, in duplicate, shall be drawn from each package and container seized.

(2) When the packages and containers



Ctrl.O.P.No. 792 of 2024

seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.”

6. The learned counsel pointed out that the packages must be bunched in lots of not more than 10 packages and from each such lot, one sample in duplicate shall be drawn. Thereafter, the learned counsel pointed out the evidence of PW-1, who had stated that 30 packets each containing 2 kgs totally 60 kgs were seized and were mixed and taken in three separate white colour gunny bags of 20 kgs each and thereafter, from the same,



Crl.O.P.No. 792 of 2024

samples were drawn. Pointing out this particular statement, the learned counsel urged that there are reasonable grounds to hold that the petitioner would be acquitted and therefore urged that the bail should be granted.

7. The learned Government Advocate (Crl. Side) on the other hand questioned the very propriety of filing a bail application in the middle of trial process and pointed out that the cross examination on behalf of this petitioner/A2 had not been completed and there has been no cross examination on behalf of the first accused at all. The learned Government Advocate (Crl. Side) stated that the prosecution also has a right to re-examine PW-1 to clarify any aspect and stated that the evidentiary aspect of the deposal can be analysed only in conjunction with all the other documentary and oral evidence produced by the prosecution. The learned Government Advocate (Crl. Side) therefore urged that this Court should dismiss this Petition.

8. I have carefully considered the rival arguments.



Crl.O.P.No. 792 of 2024

WEB COPY

9. It is a fact that this petitioner was remanded to custody on 25.06.2022 when he was travelling in the car bearing Reg.No. TN-09-AT-1566 and from the car, 60 kgs of Ganja had been seized in 30 packets each containing 2 kgs. The quantity of the contraband is seized, namely 60 kgs is commercial in nature.

10. Naturally Section 37 of the NDPS Act will come into play. The arguments advanced by the learned counsel for the petitioner with respect to the unfinished deposition of PW-1 and calling upon the Court to analyse the same, will have to be necessarily rejected because the witness is still in the witness box. This petitioner has not yet completely cross examined the witness. The counsel for the first accused has not yet commenced cross examination. There is also the possibility of the prosecution putting questions in re-examination. The evidence of PW-1 cannot be analysed independent of all other evidence to be produced by the prosecution. Only on conclusion of trial can the oral and documentary evidence be analysed. Any opinion stated now would only prejudice the mind of the trial Judge. This is not the appropriate time when application seeking bail could be filed.

11. The purport of Section 37 is to examine the material placed by



CrI.O.P.No. 792 of 2024

the prosecution along with the final report. On analysis of all such material the Court must come to a reasonable conclusion that the case would end in acquittal. Now, charges have been framed. The prosecution must be given complete freedom to establish the charges in manner known to law. Examination of PW-1 is just a small step in that direction. Even the evidence of PW-1 had not been completed. Therefore the evidence cannot be analysed as on date. The reliance placed on the aforementioned Rules relating to drawing of samples can be advanced during the course of arguments and certainly cannot be advanced at this stage when even the petitioner had not completed the cross examination of PW-1.

12. In view of these reasons, I am not inclined to grant bail. Accordingly, this Petition stands dismissed.

28.02.2024

vsg

To

1. I Additional Special Judge for NDPS Act cases at Chennai.

C.V.KARTHIKEYAN, J.



WEB COPY



Crl.O.P.No. 792 of 2024

vsg

2. The Inspector of Police
NIB CID Police Station
Kancheepuram.
3. The Central Prison, Puzhal.
4. The Public Prosecutor,
High Court of Madras.

Pre Delivery Order made in
Crl.O.P.No. 792 of 2024

28.02.2024