



Crl.O.P.No. 982 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.03.2024

PRONOUNCED ON : 18.03.2024

CORAM

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

Crl.O.P.No. 982 of 2024

Eswara Prasath

... Petitioner/
Accused

Vs.

Inspector of Police
N-4 Fishing Harbour Police Station
Chennai.
(Cr.No. 74 of 2023)

... 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. 446 of 2023
on the file of the Principal Special Judge for NDPS Act, Chennai.

For Petitioner : Mr.T.S.Sasikumar

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



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ORDER

The first accused in Cr.No. 74 of 2023 registered under Sections 8(c) read with 20(b)(ii)(C), 25, 29(1) of NDPS Act and remanded to judicial custody on 15.03.2023 along with two other accused with possession of 21.450 kgs of ganja, seeks bail.

2. It is contended that the respondent had intercepted a car near a Tollgate and had found the accused persons there and in the car, they also seized 21.450 kgs of ganja.

3. The learned counsel for the petitioner stated that the ownership of the car had not been established. It was also contended that the petitioner knows only Telugu language. It is contended that the respondents have stated that one Head Constable, Balachandar had translated the proceedings to the petitioner but the said Balachandar was not cited as a witness in the mahazar and there are no documents to show that he was actually present at the time of seizure and arrest. It was also stated that it is the contention of the respondent that the notice under Section 50 NDPS Act was translated to Telugu by the said Balachandar but again his signature is not found. It had



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been very specifically contended that the petitioner was not informed in his mother tongue, Telugu about the seizure or arrest. It was also stated that even in the confession, the contents were not explained to the petitioner. There was also no averment that the statements in the confession had been translated into Telugu for the benefit of the petitioner. The learned counsel for the petitioner further stated that the samples should have been taken in the presence of a Magistrate as given under Section 52-A of NDPS Act and alleged that there was violation of this procedure. Placing all these grounds, the learned counsel for the petitioner sought grant of bail to the petitioner/A-1.

4. The learned Government Advocate (Crl. Side) however denied and disputed every contention. According to him, the contraband seized was 21.450 kgs of ganja which is commercial quantity. It is therefore contended that the petitioner should satisfy the conditions as given under Section 37(2) of NDPS Act. It had also been stated that after the investigation, the final report had been filed and taken cognizance as C.C.No. 446 of 2023 by the Principal Sessions Court, Chennai. It had also been stated that according to the confession given by this accused, it was found that all the three accused



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had purchased the ganja from Andhra Pradesh to sell in Tamilnadu. It was also stated that there was one previous case against this petitioner in Cr.No.213 of 2022 registered under Section 20(b) read with 8(c) of NDPS Act registered at Prakasam District, Tangutur in Andhra Pradesh. It had been further stated that even in the FIR, it had been very clearly stated that all the proceedings had been translated and explained to all the accused in Telugu by the Head Constable Balachandar. It was also pointed out that the said Balachandar is cited as a prosecution witness and therefore the petitioner can very well cross examine him on all the aspects. It had therefore been contended that the petition should be dismissed.

5. I have carefully examined the arguments advanced and also perused the case diary.

6. The respondent had received information on 15.03.2023 at about 12.45 in the afternoon that there was illegal sales of ganja. Thereafter, the respondent along with his team which specifically included Head Constable Balachandar, and two others went near Container Service Road opposite Saverate Semiya Company. They then intercepted a Hyundai



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Verna Car bearing Registration No. TS-03-EZ-5254 and caught hold of the persons inside the car. They were the three accused. On searching the vehicle, it was found to contain 21.450 kgs of ganja. Thereafter, further proceedings had been initiated and the FIR had been registered in Cr.No. 74 of 2023 under Sections 8(c) read with 20(b)(ii)(C), 25, 29(1) of NDPS Act . It is also stated that the ganja had been seized from the possession of this petitioner. Thereafter, further proceedings were completed and after completion of investigation, final report had also been filed before the Special Court for EC and NDPS Act Cases at Chennai and taken cognizance as C.C.No. 446 of 2023.

7. It is the contention of the learned counsel for the petitioner that the petitioner knew only Telugu language and none of the proceedings had been translated. A perusal of the records show that even in the FIR, it had been very clearly stated that Head Constable Balachandar was present at the time of arrest. It had also been stated that he had translated into Telugu the entire proceedings. It is very significant to point out that the said Balachandar is cited as LW-4 and as a prosecution witness. It is also seen that he would depose about the seizure and arrest and also about translating the entire



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proceedings in Telugu to the accused persons. The onus is therefore on the petitioner, during the course of trial, to elicit necessary information from the said witness.

8. At the present stage, taking into consideration the fact that the contraband seized is commercial in nature, I hold that the issues raised by the petitioner should be addressed only during the course of trial. A argument could also be put forth that if the said Balachandar had also signed as a witness during the seizure and in all other documents, then he would be an interested witness during the trial and would only affirm seizure. He has been cited by the prosecution only as a person who translated the proceedings into Telugu. The taking of the samples is an issue which will have to be examined during the course of trial. In every document filed and relied on by the prosecution, the presence of Head Constable Balachandar is noted. Whether as a fact, he was present or not can therefore be established only on analysis of the evidence.



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9. To reiterate, he is a witness for the prosecution. Therefore, direct questions could be put to him whether he was actually present at the time of seizure and arrest and whether he had explained all the proceedings to the petitioner in Telugu. This Court cannot come to any conclusion either way at this stage. The only fact which stares is that the quantity is commercial in nature and therefore, the rigour of trial should naturally follow and the petitioner should participate in the trial proceedings.

10. In view of the above, I am not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

18.03.2024

vsg

Index:Yes/No

Neutral Citation:Yes/No

Speaking order : Yes/No



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C.V.KARTHIKEYAN, J.

vsg

To

1. Principal Special Court for NDPS Act, Chennai.
2. Inspector of Police
N-4 Fishing Harbour Police Station
Chennai.
3. The Central Prison, Puzhal-II, Chennai.
4. The Public Prosecutor,
High Court of Madras.

Pre Delivery Order made in
Crl.O.P.No. 982 of 2024

18.03.2024