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CrI.O.P.No.530 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

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

CrI.O.P.No.530 of 2024

Mariya Soosai Alphonse

... Petitioner/Accused 7

Vs.

State Rep. by
Union of India
Narcotic Control Bureau,
Through The Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit, Chennai.

... Respondent

Prayer: Criminal Original Petition filed under Section 439 of Cr.P.C., prayed to enlarge the petitioner on bail in C.C.No.226 of 2022 in NCB.F.No.48/1/02/2022 NCB MDS, on the file of Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

For Petitioner : Mr.K.M.Malarmannan

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor for NCB



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ORDER

The petitioner seeks bail in C.C.No.226 of 2022 in NCB.F.No.48/1/02/2022 NCB MDS, on the file of Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai registered by the respondent police for the offences punishable under Sections 8(c) r/w.Section 22(c), 25, 27(A), 28 and 29 of the NDPS Act 1985. The petitioner had been taken into custody on 20.09.2023.

2. The case of the prosecution is that on 07.02.2022 when the respondent seized 11 Kgs of White Coloured crystalline substance viz., Amphetamine at NH-16, Gummidipoondi, Tamilnadu on intercepting it near M/s.Viki Industries Private Limited, Gummudipoondi from the possession of Sivanantham from a truck bearing Registration No.TN-18-AD-1478 coming from Guwahati. The owner of the truck who was coming to Chennai by Kaveri travels bus coming behind the truck was also intercepted. During the course of the Mahazar, a preliminary enquiry was made with the owner of vehicle and he revealed that the other accused persons are in Ariyalur for one of the accused marriage. Further he revealed that other accused persons who mediated the purchase transaction of Methamphetamine on commission. He also provided the mobile numbers.



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3. The learned counsel for the petitioner submitted that there are seven accused in which the petitioner is arrayed as 7th accused. He is being implicated only based on the confession statement of 1st accused, the petitioner has been implicated as accused. Even according to the case of the prosecution, there was no records or material evidence against the petitioner. It is the case of the first accused that this petitioner roped in this case by the respondent in order to strengthening the case. The petitioner was also arrested and remanded to judicial custody on 20.09.2023. The similarly placed accused i.e., the 3rd accused was released on bail by this Court in R.R.No.06 of 2022 in NCB F.No.48/1/02/2022-NCB/MDS on the ground that except the confession statement, no other material is available to convict the accused.

4. The learned counsel appearing for the respondent filed counter affidavit and submit that the petitioner is the master brain of the entire crime. The petitioner is arrayed as 7th accused. After issuance of Non Bailable Warrant, the petitioner was secured in order to execute the said Non Bailable Warrant. The contraband which were seized from the accused is in commercial quantity. Though, the petitioner has been implicated as accused on the confession statement of the first accused, there are other materials



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available to engage the petitioner along with other accused persons such as phone calls i.e., he contacted Accused No.1 and 2 frequently from 26.12.2021 to 06.02.2022. He further submitted that during the confession statement of co-accused, he categorically confessed that the accused persons financed to the tune of Rs.20,30,000/- for procurement of the contraband.

5. On perusal of the records revealed that the petitioner is arrayed as 7th accused. Admittedly, the petitioner has been implicated as accused on the confession statement of the first accused. Though, the contraband was seized on 07.02.2022, the petitioner was secured only on 20.09.2023. The Non Bailable Warrant was issued as against the petitioner on the file of the II Additional Special Judge, EC & NDPS Court, Chennai. On execution of Non Bailable Warrant, the petitioner was secured. On perusal of the phone calls, except the confession statement and call details between the other accused persons, no other materials have been registered by the respondents. Further, admittedly, the petitioner was not in possession of contraband and he was not present while seizing the contraband. The 3rd accused was also on same footing and released on bail by an order dated 19.09.2022.



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6. Considering the above facts and circumstances of the case and the submissions made by the learned counsels and also taking note of the fact that the petitioner has come forward to deposit an amount of **Rs.50,000/-** (Rupees Fifty Thousand only) by way of Demand Draft to the **Arignar Anna Memorial Cancer Hospital & Research Institute, Kancheepuram** and also taking note of the fact that the petitioner is in judicial custody from 20.09.2023, this Court is inclined to grant bail to the petitioner with certain conditions:

7. Accordingly, the petitioner shall deposit a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) by way of Demand Draft to the **Arignar Anna Memorial Cancer Hospital & Research Institute, Kancheepuram** and on such deposit, 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 **I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai** and on further conditions that:



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[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 deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) by way of Demand Draft to the Arignar Anna Memorial Cancer Hospital and Research Institute, Kancheepuram and the receipt of such payment shall be produced before the concerned Magistrate at the time of executing the bond;

[c] the petitioner shall appear before the trial court daily at 10.30 a.m and 5.30p.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 petitioners in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.



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[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

28.02.2024

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G.K.ILANTHIRAIYAN

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To

1.The Special Judge,
I Additional Special Court
for Exclusive Trial of Cases under NDPS Act,
Chennai.

2. The Intelligence Officer,
Narcotic Control Bureau,
Narcotic Control Bureau,
Chennai Zonal Unit, Chennai.

3. The Central Jail, Puzhal,
Chennai-600 066.

4. The Public Prosecutor,
High Court of Madras.

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