



Crl.O.P.Nos.1791, 3316 & 3803 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2024

PRONOUNCED ON : 25.06.2024

CORAM

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

Crl.O.P.Nos.1791, 3316 & 3803 of 2024

A.Surya Prakash ... Petitioner/A2 in Crl.O.P.No.1791 of 2024

S.Gokul ... Petitioner/A5 in Crl.O.P.No.3316 of 2024

J.Ambedkar ... Petitioner/A1 in Crl.O.P.No.3803 of 2024

Vs.

State represented by
The Inspector of Police,
R-2 Kodambakkam Police Station,
Chennai – 600 024.
OPs
(Crime No.44 of 2023)

... Respondent/Complainant in all

PRAYER: These Criminal Original Petition filed under Section 439 of Cr.P.C., prayed to enlarge the petitioners on bail in C.C.No.576 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai.



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For Petitioner : Mr.K.Santhosh
in Crl.O.P.No.1791 of 2024

: Mr.M.Madhuprakash
in Crl.O.P.No.3316 of 2024

: Mr.K.Madhu
in Crl.O.P.No.3803 of 2024

For Respondent : Mr.V.J.Priyadarsana,
Govt. Advocate (Crl. Side) in all OPs

COMMON ORDER

A1 has filed Crl.O.P.No.3803 of 2024. A2 has filed Crl.O.P.No.1791 of 2024 and A5 has filed Crl.O.P.No.3316 of 2024, all in C.C.No.576 of 2023 now pending trial before the Special Court for EC and NDPS Act, Chennai, seek bail.

2.Originally, Crime No.44 of 2023 had been registered by the respondent for the offences punishable under Section 8(c) r/w 20(b)(ii)(c), 25 and 29(1) of the Narcotic Drugs & Psychotropic Substances Act, 1985. A1 and A2 had been remanded to judicial custody on 04.03.2023 and A5 had



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been remanded to judicial custody on 07.03.2023.

3.It was the case of the prosecution that on 04.03.2023, based on information, the respondent had intercepted A1, A2 and A3 who came in a two wheeler bearing Registration No.TN-18-AJ-3045 and recovered 21.700 Kgs of Ganja. It had been stated that A3, A4, A5 and A8 had purchased the contraband at Thuni in Andhra Pradesh and had thrown the same at Perambur railway track. Subsequently, A6 and A7 had picked up the contraband from the railway track and had handed over the same to A3. Thereafter, A1, A2 and A3 were transporting the contraband in the two wheeler vehicle bearing Reg. No.TN-18-AJ-3045. When they were intercepted by the respondent, the contraband was seized.

4.The learned counsel for the 5th accused stated that the 5th accused was taken and remanded to custody only on the confession of A1, A2 and A3 and was not present when the contraband was seized from A1, A2 and A3 on 04.03.2023.

5.The learned counsel for the 1st and 2nd accused stated that the quantity seized is 21.700 Kgs and if the actual measurement of the weight is taken leaving out the leafs and other parts, the quantity would be less than 20 Kgs, which would be less than commercial quantity.



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6.The learned Government Advocate (Crl. Side) for the respondent, however, contended that the quantity of Ganja seized is a commercial quantity weighing 21.700 Kgs and further stated that though there is no recovery specifically from A5, the role of A5 can be determined only during the course of trial.

7.I have carefully considered the arguments advanced and perused the materials on record.

8.In this case, after completing investigation, a final report had also been filed before the competent Court. In the final report, it had been very specifically stated that A4 and A5 had purchased the Ganja from Thuni in Andhra Pradesh and thrown the same in the Perambur railway track and later A6 and A7 had recovered the same from the Perambur railway track and hand it over to A3 and thereafter, A1, A2 and A3 were transporting the contraband. When they were intercepted by the respondent, the contraband was seized and the accused persons had been arrested by the respondent.



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9.A learned Single Judge of this Court by two separate orders dated 12.06.2023 and 20.06.2023 in Crl.O.P.No.12941 of 2023 and Crl.O.P.No.13118 of 2023 had granted bail to A6 and A7. They had picked up the contraband from the railway track and hand it over to A3, Mohan.

10.The learned counsel for the 5th accused stated that A5 is on the same platform, as that of A6 and A7, but A5, was also instrumental in purchase of the contraband from Thuni along with A4 and A8. The role of A5 is therefore very specific. The contraband had been seized from A1, A2 and A3 who had found in possession of 21.700 Kgs of Ganja, which was commercial quantity. Only one mahazar had been prepared at the time of seizure and there has been no split up in the seizure.

11.In *State by the Inspector of Police Vs. B.Ramu* reported in [2024] 2 SCR 357, the Hon'ble Supreme Court had held as follows:

“8. Section 37 of the NDPS Act deals with bail to the accused charged in connection with offence involving



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commercial quantity of a narcotic drug or psychotropic substance. The provision is reproduced hereinbelow for the sake of ready reference:

“[37. Offences to be cognizable and nonbailable.—(1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of



subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail]”

9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

10. It is apposite to note that the High Court not only omitted to record any such satisfaction, but has rather completely ignored the factum of recovery of narcotic substance (ganja), multiple times the commercial quantity. The High Court also failed to consider the fact that the accused has criminal antecedents and was already arraigned in two previous cases under the NDPS Act.

11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

12. For entertaining a prayer for bail in a case



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involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act.

13.

14.The fact that after investigation, the charge sheet has been filed against the respondent-accused along with other accused persons, fortifies the plea of the State counsel that the Court could not have recorded a satisfaction that the accused was prima facie not guilty of the offences alleged.”

12.Thus, this Court will have to record a satisfaction that there are grounds for believing that the accused are not guilty of the alleged offence. The petitioners had not satisfied any of the grounds under Section 37 of the NDPS Act.

13.Observing as above, I am not inclined to grant bail to the petitioners. Accordingly, these Criminal Original Petitions stand dismissed.

25.06.2024

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Index : Yes / No
Neutral Citation : Yes / No
Speaking order : Yes / No

To

1. The Principal Special Court for EC & NDPS Act Cases, Chennai
2. The Inspector of Police,
R-2 Kodambakkam Police Station,
Chennai – 600 024.
2. The Public Prosecutor,
High Court of Madras.



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