



Crl.O.P.No.8290 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM

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

Crl.O.P.No.8290 of 2024

Selvaraj @ Selvam

...Petitioner/A2

Vs.

State represented by
The Inspector of Police,
PEW Gummidipoondi Unit.
(Crime No.326 of 2023)

...Respondent/Complainant

PRAYER:

Criminal Original Petition is filed under Section 439 of Cr.P.C.
praying to enlarge the petitioner on bail in Crime No.326 of 2023 on the
file of the respondent police.

For Petitioner : Mr.S.P.Ponbalaji

For Respondent : Mr.V.J.Priyadarsana
Govt. Advocate (Crl. Side)



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ORDER

The petitioner / A2, who was arrested and remanded to judicial custody on 05.09.2023 for the offence punishable under Sections 8(c), 20(b)(ii)(B), 29(1) & 25 of NDPS Act, 1985 in Crime No.326 of 2023 on the file of the respondent police, seeks bail.

2.It is the case of the prosecution that the respondent on 17.08.2023 had arrested the first accused with possession of 32 kgs of Ganja which is commercial quantity. On the confession of the first accused, subsequently, this petitioner was arrested and remanded to custody on 05.09.2023. It must also be pointed out that there is yet one more accused, A3, who is absconding.

3.Earlier petition seeking bail was dismissed on 28.02.2024 in Crl.O.P.No.2039 of 2024. At that point of time, the learned counsel for the petitioner had relied on the judgment of the Hon'ble Supreme Court in ***Crl.A.No.475 of 2024 [Ramachandrulu Ramireddy Vs. State of Tamil Nadu]*** wherein, the Hon'ble Supreme Court had held as follows:



“Going by the prosecution case, a very limited role has been ascribed to the appellant. Moreover, the case of the prosecution is that the appellant had financed the vehicle in which the contraband was allegedly found. The appellant had provided a finance of Rs.85,000/- (Rupees Eighty-five Thousand) to Shriram Transport Finance. At highest, the role ascribed to the appellant is that he was escorting the vehicle in which the contraband was found.

Considering these peculiar facts, the appellant deserves to be enlarged on bail, pending the trial.”

4.This Court had distinguished that particular judgment and had stated that in this case, the petitioner had financed the purchase of the ganja which is narcotic drug and did not finance the purchase of the vehicle.

5.The learned counsel for the petitioner now relies on the judgment of the Hon'ble Supreme Court in ***SLP (Crl.) No.242 of 2022, State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & Anr.***, which was decided along with ***SLP (Crl.) No.1569 of 2021, Union of India Vs. Mohammed Afzal.***



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6.The appeal filed by the State in ***SLP (Crl.) No.242 of 2022, State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & Anr.***, was dismissed by the Hon'ble Supreme Court. While examining the fact of that particular case, it is seen that the respondent therein, had financed the purchase of ganja. This was evident from the confession of the other accused. It was observed as follows:

“3. Munees Kavil Paramabath [A-8], respondent in SLP (Crl.) No. 1454/2021 was purportedly found to be in conversation with A-2, A-6, A-7 and A-8 as per the CDR of A-5 on the date of the seizure. The petitioner-NCB claims that apart from the statement of A-5 recorded under Section 67 of the NDPS Act, he had also voluntarily stated during his examination that he was paid money by A-8 for financing the drugs. Abu Thahir @ Abdu [A-5] and Sabir Bayan [A-7], respondents in SP (Crl.) No. 1773-1774/2021 were similarly arrested on the statement of the co-accused, namely, A-2, A-6 and A-8 and on an allegation that flight tickets of A-1 were recovered from the house of A-5 and A-6.”



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7.While examining the facts once again the Hon'ble Supreme Court had observed as follows:

“8.Another piece of evidence referred to is the CDR details in respect of A-3, A-4, A-5, A-6 and A-8 in the first case which as per the prosecution, goes to show that the said respondents were constantly in touch with each other and with A-1 and A-2 on the date of the seizure. The attention of this Court was also drawn to the fact that the antecedents of A-5, A-6 and A-8 in the first case and A-2 and A-5 in the second case are not clean.”

8.The Hon'ble Supreme Court had thereafter held as follows in paragraph No.10:

*“10. It has been held in clear terms in **Tofan Singh Vs. State of Tamil Nadu 6** , that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the*



accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.

9.The other appeal in ***SLP (Crl.) No.1569 of 2021, Union of India Vs. Mohammed Afzal***, however, had been allowed since there was specific allegation of recovery of commercial quantity of drugs from the respondent therein.

10.It is also seen that in this case, A1 was refused bail under Section 167(2) Cr.P.C., by the learned Principal Special Judge under EC & NDPS Act, Chennai, even though charge sheet was not filed within the



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stipulated period of time. Questioning that order, A1 has filed Crl.R.C.No.553 of 2023. A learned Single Judge of this Court by an order dated 28.03.2024 had granted bail to A1.

11.The only explanation given for not filing the charge sheet is that A3 is still absconding. But however, showing A3 as absconding, the charge sheet could very well have been filed. The petitioner has been in custody from 05.09.2023 onwards for well over seven months.

12.Taking into consideration that the only piece of evidence as against the petitioner is the CDR details and the fact that it had come to light that the petitioner had financed for purchase of ganja, which fact will have to be examined during the course of trial and placing reliance on the observations of the Hon'ble Supreme Court as extracted above, I am inclined to grant bail to the petitioner subject to the following conditions.

13.Accordingly, the petitioner is ordered to be released on bail on



condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum to the satisfaction of the learned District Munsif cum Judicial Magistrate, Gummudipoondi, and on further conditions that:

[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 report before the respondent police daily at 10.30 p.m., until further orders.

[c] the petitioner shall not abscond either during investigation or trial.

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner 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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[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

30.04.2024

smv

To

1. The District Munsif cum Judicial Magistrate, Gummudipoondi.
2. The Puzhal Prison, Chennai.
3. The Inspector of Police,
PEW Gummidipoondi Unit.
4. The Public Prosecutor,
High Court of Madras.



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C.V.KARTHIKEYAN. J.

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