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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

CrI.O.P.No.9378 of 2024

C. Sakthivel S/o. Chandran

... Petitioner

Vs.

The State rep by:

The Inspector of Police,
N-3 Muthialpet Police Station,
Chennai - 600 001.
(Crime No.32 of 2023)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of the Criminal Procedure Code, 1973 (Act No.2 of 1974) praying to grant bail to the petitioner in [Crime No.32 of 2023 on the file of the respondent police] C.C. no.639 of 2023 on the file of Principal Special Judge, Special Court for Exclusive Trial of Cases under NDPS Act at Chennai.

For Petitioner : Mr. M.G. Martin Manivannan

For Respondent : Mr. Leonard Arul Joseph Selvam
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed by the petitioner under Section 439 of the Criminal Procedure Code, 1973 (Act No.2 of 1974) praying to grant bail.



2. The petitioner / accused was arrested and remanded to judicial custody on 03.03.2023 for the alleged offences punishable under Sections 8(c) r/w 22 (c), 25 & 29(1) and later it was altered to Sections 8(c) r/w 20 (a)(i), 22(c), 25 & 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) in Crime No.32 of 2023, on the file of the respondent police.

3. The learned counsel appearing for the petitioner would contend that the petitioner has not committed any offence as alleged in the FIR and he has been falsely implicated in this case; there was no contraband seized from the petitioner and he was not arrested at Stanley Rountana and he has been under the custody for nearly 15 months and the respondent police have not followed the mandatory procedures contemplated under the Act at the time of drawing samples; as per the standing orders, not less than 5 gms have to be taken as samples, in the case on hand, they have not sent the above said quantity of samples and they have taken only sent 2 stamps of samples and thereby they failed to follow the mandatory procedures and further, the case is posted for framing of charges and no previous cases are pending as against the petitioner. Since already the investigation was completed and charge sheet was filed and the case is posted for framing of charges, the petitioner may be released on bail.

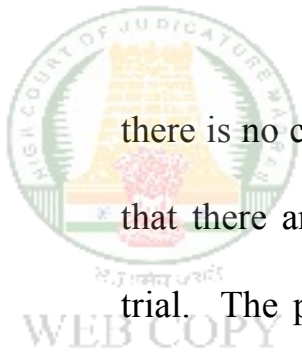


3.1. Further he relied upon judgments in (i) *Raju vs. State in Crl. S.L. No.25771 of 2023*, (ii) *Laxman Thakur vs. State (Govt. of NCT of Delhi), bail application No. 3233 of 2022 on the file of High Court of Delhi* (iii) *Deshraj Gurjar vs. State of Rajasthan, bail application No.9064 of 2023*; (iv) *Mohammed Khalid and another v. The State of Telangana in Criminal Appeal No.1610 of 2023 on the file of Hon'ble Supreme Court* and (v) *Ganesh Moorthy vs. State in S.L.P. No.3833 of 2023*.

4. The learned Government Advocate (criminal side) appearing for the respondent police would contend that the petitioner has committed serious offences and the quantity is commercial quantity and the alleged procedural violations have to be established through trial, not at the stage of granting bail; that the respondent police have denied the alleged procedural violations and the respondent police have followed the procedures contemplated under law while drawing samples as well as in the investigation. The case is posted for framing of charges and if the petitioner is granted bail at this stage, there are possibilities to hamper the trial and there is more possibility to flee away and therefore, the petition is liable to be dismissed.

5. Heard both sides and perused materials.

6. Considering the rival submissions made on either side, considering the fact that already this Court dismissed the bail petition in respect of this petitioner and



there is no change of circumstance. As far as the contentions raised by the petitioner that there are procedural violations, the same has to be looked into at the time of trial. The procedural violations to be decided through oral evidence and it needs elaborate trial. Without examining the witnesses concerned, it is not appropriate to decide the same at the stage of bail petition. In this case, the quantity is commercial quantity. Considering the gravity of the offences and considering the fact that the case is posted for framing of charges, it is not appropriate to grant bail to the petitioner at this stage. As far as the judgments relied on by the petitioner is concerned, they will not be applicable to the present facts of the case, because this case is at the stage of bail application. As far as the case of *Ganesh Moorthy v. State* is concerned, the Hon'ble Supreme Court granted bail considering the quantity of Methamphetamine and the period of incarceration, in the case on hand, the quantity is commercial. Therefore, the said case law relied on by the petitioner will not be applicable to this case. In view of the said reasons, the bail petition is liable to be dismissed and accordingly this Criminal original petition is dismissed. At the same time, the Trial Court is directed to dispose the main case as early as possible without giving any long adjournment preferably within **4 months** from the date of receipt of a copy of this order.

7. Accordingly, the Criminal Original Petition is dismissed.



10.06.2024

Index : Yes/No

Internet : Yes/No

Neutral citation : Yes/No

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To:

The Principal Special Judge,
Special Court for Exclusive Trial of Cases under NDPS Act,
Chennai.

P.DHANABAL, J.



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