



Crl.O.P.Nos.9392 & 13853 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2024

PRONOUNCED ON : 28.06.2024

CORAM

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

Crl.O.P.Nos.9392 & 13853 of 2024

Konda Reddy ... Petitioner/A2 in Crl.O.P.No.9392 of 2024

Uppalapatti Anji ... Petitioner/A3 in Crl.O.P.No.13853 of 2024

Vs.

State represented by
The Inspector of Police,
N-3, Muthialpet Police Station,
Chennai.
(Crime No.13 of 2023)

... Respondent/Complainant in both OPs

PRAYER: These Criminal Original Petitions filed under Section 439 of Cr.P.C., prayed to enlarge the petitioners on bail in C.C.No.334 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.T.S.Sasikumar
in Crl.O.P.No.13853 of 2024
Mr.R.Sasikumar
in Crl.O.P.No.9392 of 2024



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

COMMON ORDER

A2 has filed Crl.O.P.No.9392 of 2024. A3 has filed Crl.O.P.No.13853 of 2024 both in Cr.No.13 of 2023 registered under Section 8(c) read with Sections 20(b)(ii)(C), 25 and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Both the accused had been remanded to judicial custody on 25.01.2023.

2.It is the case of the prosecution that the respondent received information about three persons trafficking Ganja from Telangana by way of Ashok Leyland Lorry bearing Registration No.TS-04-UC-1733. It is stated that the respondent intercepted the lorry and the persons disclosed their identity. Thereafter, when a search was made in the lorry, they found that there was totally 44 Kgs of Ganja in the said lorry. It had been stated that subsequently investigation had been completed and final report had been filed and taken cognizance as C.C.No.234 of 2023.



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3.The earlier petitions seeking bail was dismissed on 11.03.2024 and it had been observed by this Court, even at that time, that the procedure taken by the respondent to explain the consequence of arrest, recovery and translate the procedures could not be found fault with.

4.A learned Single Judge of this Court had also dismissed the bail petition of the first accused in Crl.O.P.No.20352 of 2023 by an order dated 15.11.2023.

5.The main point urged by the learned counsel for the petitioner is that the trial had not even commenced. A report had therefore been sought from the learned Principal Special Court for EC & NDPS Act, Chennai. In the report it had been stated that on successive hearing dates, the counsels were filing memos of appearance for A2 and A3. Further A1 had not engaged any counsel. It had been stated that though the Court had informed A1 that he could engage counsel or engage a legal aid counsel, still, A1 had not engaged the counsel. It had been stated that this was the reason for delay in proceeding with the case further.



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6.It is thus seen that the petitioners have to suffer incarceration not only owing to the charge against them, but also owing to the fact that they had been changing counsels and one of the accused / A1 had not even appointed the counsel. The petitioners, therefore cannot blame the judicial system for delay.

7.It is also seen that the quantity of Ganja seized is 44 Kgs, which is commercial quantity. All the three accused had been found travelling in a lorry bearing Reg. No.TS-04-UC-1733, wherein 44 Kgs of Ganja had been seized.

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



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“[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 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.



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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.”

9.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.

10.Taking all the factors into consideration, I am not inclined to grant bail to the petitioners. Accordingly, these Criminal Original Petitions stand dismissed.

28.06.2024

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



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To

1. The Principal Special Court for EC & NDPS Act Cases, Chennai
2. TheThe Inspector of Police,
N-3, Muthialpet Police Station,
Chennai.
2. The Public Prosecutor,
High Court of Madras.



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C.V.KARTHIKEYAN, J.

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