



Crl.O.P.No.9389 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2024

Pronounced on : 25.06.2024

CORAM

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

Crl.O.P.No.9389 of 2024

Ganderi Chittibabu

...Petitioner/Accused-2

Vs.

State represented by
Inspector of Police
H-1, Washermenpet Police Station
Chennai - 600 021.

...Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail pending in C.C.No.708 of 2023 on the file of the Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.M.G.Martin Manivannan

For Respondent : Mr.V.J.Priyadarsana
Government Advocate [Crl.Side]



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ORDER

The petitioner/A2 had been remanded to custody on 19.03.2023 for offences under Section 8(c) read with 20(b)(ii)(c), 29(1) of NDPS Act, 1985 in Crime No.102 of 2023 on the file of respondent, seeks bail.

2. It is the case of prosecution that this petitioner along with A1 was found in possession of 21 kgs. of ganja which is a commercial quantity. It had been stated that investigation has been completed and final report has also been filed and was taken cognizance as C.C.No.708 of 2023 before the Principal Special Court for EC & NDPS Cases, Chennai.

3. It is the contention of the learned counsel for petitioner that the petitioner is innocent of the offence and he is not at all related with the co-accused involved in the crime. It has also been stated that the respondent have not provided any evidence to show that this petitioner is connected with the co-accused. It is also been stated that even though cognizance has been taken on the final report, trial has not yet commenced. Therefore, he insisted that this Court should consider the bail application of the petitioner herein.

4. A counter affidavit had been filed on behalf of the respondent in



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Crl.OP.No.22446 of 2023, the earlier application seeking bail wherein it had been stated that 21 kgs of ganja were seized from A1. It had been stated that this petitioner[A2] and A3 were in conscious possession of contraband. It was stated that all the three accused while standing at Moolakutharam signal were found in possession of contraband, were arrested. It had been further stated that since the contraband seized is commercial quantity, it attracts Section 37 of the NDPS Act and that the petitioner will have to satisfy the conditions laid down under that provision.

5. The earlier petition seeking bail by this petitioner and that of A1 in Crl.OP.No.22446 of 2023 was dismissed by this Court on 06.10.2023, nearly about more than eight months back. Unfortunately, the trial has not yet commenced till now, which means the petitioner has been languishing in prison.

6. Even though investigation has been completed and cognizance has been taken thereof, the trial has not started. This Court required the respondent to furnish a copy of the final report. Accordingly, the respondent had furnished a copy of the final report.

7. It is seen that the role of this petitioner had been determined by



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the respondent only on the basis of the confession statement which had been recorded. It is trite in law to point out that the respondent cannot rely on that confession statement as against this petitioner. Be that as it may, it had been stated that the A3, who is the father-in-law of A1 had died subsequently. The primary incriminating evidence against the petitioner is that he was standing along with A1 at the time of his arrest. It is to be noted that the contraband was seized only from A1. The Mahazar also reflects the same. Even according to the respondent, the petitioner was not in possession of the contraband. Whether the petitioner [A2] had the knowledge that the first accused [A1] was in possession of ganja is an issue which has to be decided during the course of trial. It is also seen that this petitioner does not know Tamil language and every document had been written in Tamil and had been purportedly translated to him.

8. Naturally all this would present an arguable case on behalf of the petitioner that he may not have understood the proceedings at the time of arrest and seizure. Section 37 of NDPS Act provides that a Court can grant bail to an accused provided it is satisfied that there is a possibility of the petitioner not being found guilty on conclusion of trial.



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9. The fact which weigh in the mind of the Court is that the contraband was not seized directly from the petitioner; that the petitioner does not know Tamil language; that the third accused [A3] had died and therefore, an important link in the case of the prosecution is not available to link all the three accused together. It is also to be noted that even though cognizance has been taken on the final report in 2023, which is now nearly more than eight months, the trial has not yet commenced.

10. Taking into consideration the period of incarceration and all these facts, I am inclined to grant bail to the petitioner.

11. 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, out of which, one surety should be a blood surety**, each for a like sum to the satisfaction of the learned Principal Special Judge, Special Court for EC & NDPS Act cases, Chennai, 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 appear before the respondent



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everyday at 10.30 a.m., except from the Court hearing dates.

[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].

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

25.06.2024

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To :

1. The Central Prison
Puzhal, Chennai.
2. The Inspector of Police
H-1, Washermenpet Police Station



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3.The Public Prosecutor,
High Court of Madras.

4.The Principal Special Judge,
EC & NDPS Court
Chennai.



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C.V.KARTHIKEYAN. J.,

ds

Pre-delivery order in
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