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Crl.O.P.No.10395 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.10395 of 2024

Umar Sakubar

...Petitioner

-Vs -

The State Represented by
The Inspector of Police,
Prohibition Enforcement Wing,
Washermenpet, Chennai.
(Crime No.370 of 2022)

...Respondent

Prayer: Criminal Original Petition filed under Section 439 of Cr.P.C.,
prayed to enlarge the petitioner on bail in C.C.No.523 of 2023 on the file
of the I Additional Sessions Judge, EC & NDPS Act, Chennai, in Crime
No.370 of 2022, on the file of the respondent.

For Petitioner : Mr.R.Thamaraiselvan

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

The petitioner, who was arrested and remanded to judicial
custody on 18.12.2022, for the offence under Sections 8(c), 20(b)(ii)(c),



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25 and 29(1) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”) in Crime No.370 of 2022 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 18.12.2022, based on the secrete information, the respondent police went to the place of occurrence and found that the petitioner was in illegal possession of 20.400 Kgs of Ganja. Hence the complaint.

3. The learned counsel appearing for the petitioner submitted that a false case has been foisted as against the petitioner. He further submitted that though the respondent filed final report and the same has been taken cognizance, till now the trial has not been commenced and there are lot of discrepancies while arresting the petitioner. The petitioner was arrested and remanded to judicial custody on 18.12.2022 and he is incarceration for more than 1½ years and hence, he prays for grant of bail to the petitioner.



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4. The learned Government Advocate (CrI. Side) appearing for the respondent police submitted that the petitioner was found in possession of 20.400 Kgs of Ganja, which is commercial in quantity. Now the trial has been commenced and the case is posted on 13.06.2024 for trial before the trial Court. Hence, he vehemently opposed to grant bail to the petitioner.

5. It is seen that there are totally two accused in which the petitioner is arrayed as first accused. Now the respondent filed final report and the same has been taken cognizance in C.C.No.523 of 2023 on the file of the I Additional Session Judge, EC & NDPS Act, Chennai. So far, the trial has not been commenced till now. The learned counsel appearing for the petitioner vehemently contended that the source of information was received on 18.12.2022 at 9.30 a.m. On the basis of the secrete information, search was conducted at about 10.50 a.m., when the petitioner proceeded in his motor cycle near Madha Kovil Street, NRT Bridge junction. The contraband was seized from the petitioner at about 11.50 a.m., on 18.12.2022. However, the seizer maghazar has contained the crime number as Cr.No.370 of 2022. The petitioner's confession



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statement was recorded at 12.00 p.m., on 18.12.2022. His arrest was shown at about 11.40 am., on 18.12.2022. Further the FIR was registered at about 1.00 pm., on 18.12.2022. Therefore, even before the registration of FIR, in all the documents such as seizer maghazar, confession statement and arrest report consisting the crime number and those documents were prior to the FIR.

6. That apart, though the respondent filed final report and the same has been taken cognizance in C.C.No.523 of 2023 by the trial Court, so far trial has not been commenced. The petitioner was arrested and remanded to judicial custody on 18.12.2022. Therefore, the petitioner satisfied the twin conditions as contemplated under Section 37 of the NDPS Act. Considering the above facts and circumstances of the case and the submissions made by the learned counsels and also taking note of the fact that the petitioner is in judicial custody from 18.12.2022, this Court is inclined to grant bail to the petitioner with certain conditions.



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7. Accordingly, the petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) by way of Demand Draft to the Arignar Anna Memorial Cancer Hospital & Research Institute, Kancheepuram and on such deposit, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two blood related sureties, each for a like sum to the satisfaction of the learned I Additional Sessions Judge, EC & NDPS Act, 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 deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) by way of Demand Draft to the Arignar Anna Memorial Cancer Hospital and Research Institute, Kancheepuram, and that the receipt of such payment shall be produced before the concerned Magistrate at the time of executing the bond;

[c] the petitioner shall appear before the trial Court daily at 10.30 a.m and 5.30 p.m. until further orders.

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

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



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[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners 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].

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

8. It is made clear that any of the observations made by this Court in this Order may not influence the trial Court while completing the trial.

12.06.2024

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

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WEB COPY To

1. The I Additional Session Judge,
EC & NDPS Act,
Chennai.
2. The Inspector of Police,
Prohibition Enforcement Wing,
Washermenpet, Chennai.
3. The Central Prison,
Puzhal, Chennai-600 066.
4. The Public Prosecutor,
High Court of Madras,
Chennai.



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G.K.ILANTHIRAIYAN. J.

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