



CrI.O.P.No.10308 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2024

PRONOUNCED ON : 25.06.2024

CORAM

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

CrI.O.P.No.10308 of 2024

N. Sharukhan

... Petitioner/A2

Vs.

State represented by
The Inspector of Police,
Mudaliarpet Police Station,
Puducherry District.
(Crime No.212 of 2023)

... Respondent/Complainant

PRAYER: This Criminal Original Petition filed under Section 439 of Cr.P.C., prayed to enlarge the petitioner on bail in Crime No.212 of 2023 on the file of the respondent.

For Petitioner : Mr.T.Elumalai

For Respondent : Mr.Mohandass,
Public Prosecutor,
Union Terriotry of Puducherry



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ORDER

The petitioner / A2, who was arrested and remanded to judicial custody on 26.11.2023 for the offences punishable under Sections 8(c) and 20(b)(ii)(C) of NDPS Act, 1985 in Crime No.212 of 2023 on the file of the respondent, seeks bail.

2.It is the case of the prosecution that the respondent received information on 26.11.2023 at around 4.00 PM that some persons were selling Ganja to the general public below the Over Bridge, New Bypass Road, Mudaliyarpet, Puducherry. The Tashildar, Puducherry Taluk, was requested to depute two official witnesses. Thereafter, the respondent went to that particular place and found seven persons standing near a Maruti Swift Desire car bearing Registration No.WB-26-C-9946, a Mahindra Xylo car bearing Registration No.TN-66-J-5860, and a Honda Dio motorcycle bearing Registration No.TN-32-AL-8948 with a brown plastic cover in their hands and selling some bundles to young persons. On seeing the police, all the persons tried to escape. Six persons were apprehended. They included the present petitioner. From all the persons so intercepted, a search was made



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after following due procedure and 45 Kgs of Ganja in 22 bundles each containing 2 Kgs and 1 bundle containing 1 Kg were recovered. Thereafter, the respondent followed further procedure of arrest, seizure and taking samples. It had been specifically stated that this petitioner, was engaged in selling of Ganja as his permanent job. It had also been stated that two of the accused are still absconding. It had been stated that witnesses will have to be examined and that the investigation is at a crucial stage. It had therefore been stated that this petition seeking bail should be dismissed.

3.In the petition seeking bail, it had been stated that the petitioner was illegally restrained and taken from his house on 25.11.2023 at around 8.00 PM by the respondent. It was also stated that the Honda Dio scooter bearing Registration No.TN-32-AL-8948 was taken unlawfully by the respondent from the possession of one Mubarak S/o. Shameer. It had been stated that this had been witnessed by the general public and also recorded in CCTV camera. It had been stated that on the same day at around 11.30 PM the said bike was taken to Villupuram new bus stand bike parking and parked the bike there for full night and thereafter, taken out on the next day evening, 26.11.2023 at around 4.30 PM and was driven back to Puducherry.



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It had therefore been contended that the entire allegations of the respondent are false.

4.The learned Public Prosecutor (Puducherry) for the respondent, however, stated that after completing investigation a final report had also been filed indicating that A1 and A8 are absconding accused.

5.The learned counsel for the petitioner stated that the case status reflect that A8 had subsequently secured and remanded to custody and A1 is still under custody.

6.A perusal of the records show that the quantity of Ganja seized was 45 Kgs which is commercial in nature.

7.The learned counsel for the petitioner mainly advanced arguments about the alleged illegality of the arrest. But however, Section 37 of the NDPS Act, places a bar for examination of bail and it had also been provided under Section 37 (2) of the NDPS Act, that the limitations are in addition to the limitations under the Code of Criminal Procedure.



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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:

“[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.

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 the satisfaction that there are grounds for believing that the accused is not guilty of the alleged offence. It must also be stated that even in the petition seeking bail before the Special



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Court under NDPS Act, Puducherry in Crl.M.P.No.5056 of 2023 or in the first petition seeking bail in Crl.O.P.No.744 of 2024 before this Court, the petitioner had not argued about the illegality of the arrest. The contentions had been rejected on both the earlier occasions by this Court. The petitioner had not satisfied any of the grounds under Section 37 of the NDPS Act.

10.Observing as above, I am not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

25.06.2024

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order : Yes / No



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To

1. The Inspector of Police,
Mudaliarpur Police Station,
Puducherry District.
2. The Public Prosecutor,
High Court of Madras.



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C.V.KARTHIKEYAN, J.

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