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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.07.2024

PRONOUNCED ON : 31.07.2024

CORAM

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

CrI.O.P.No.15462 of 2024

Hameem @ Ameen Allah

... Petitioner/A1

Vs.

State represented by
The Inspector of Police,
T-13, Chitalapakkam Police Station,
Chennai – 600 064.
(Crime No.98 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 C.C.No.484 of 2023 in Crime No.98 of 2023 on the file of the Principal Special Court for EC and NDPS Act, Chennai.

For Petitioner : Mr.R.Thamaraiselvan
For Mr.P.Veera Narayanan

For Respondent : Mr.V.J.Priyadarsana,
Govt. Advocate (CrI. Side)



ORDER

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The petitioner / A1, seeks bail in C.C.No.484 of 2023 now pending trial before Principal Special Court under EC & NDPS Act cases, Chennai.

2.Originally, FIR in Crime No.98 of 2023 had been registered by the respondent police for the offences punishable under Sections 8(c), 20(b)(ii)(c), 29(1) and 25 of NDPS Act. The petitioner was arrested and remanded to judicial custody on 17.03.2023.

3.It is the case of the prosecution that on 17.03.2023, an information had been received about illegal transport of Narcotic Substances. The Sub-Inspector of Police had formed a team and went to 200 Feet Radial Road, nearby Vel's College Check Post. They intercepted a Maruti Zen vehicle bearing Registration No.AP-05-AC-4447. A1 to A4 were travelling in the vehicle. When the vehicle was searched, A1 / the petitioner was found in possession of a white colour plastic bag containing 22 kgs of Ganja and A2, A3 and A4 were each found in possession of white colour plastic bag each containing 10 Kgs of Ganja.



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4. After due procedure, all the four accused were remanded to custody on 17.03.2023. The respondent registered an FIR in Crime No.98 of 2023 for the offences punishable under Sections 8(c), 20(b)(ii)(c), 29(1) and 25 of NDPS Act. Subsequent procedures have also been followed including the samples of contraband being sent to Forensic Science Laboratory for chemical analysis. A report had been received stating that the contraband seized was actually Ganja. Thereafter, on competition of investigation, a final report had been filed before the Principal Special Court for EC and NDPS Act cases, Chennai. It was taken cognizance as C.C.No.484 of 2023.

5. In the counter, it had been stated that the accused had not yet appointed any counsel. Therefore, the Trial Court is not in a position to proceed further. Earlier petition seeking bail by this petitioner had been dismissed by an order dated 13.10.2023 in CrI.O.P.No.19897 of 2023. On that date, this Court had stated that the trial Court should proceed further with the trial and endeavour to dispose of the case at the earliest. But however, none of the accused have appointed any counsel,, as seen from the counter filed by the respondent, which was presented in Court on 22.07.2024. It was stated that the matter was posted before the Trial Court on the same date on 22.07.2024 for engaging counsel.



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6.The learned counsel for the petitioner pointed out that when recovery is from two or more accused separately and when one of the accused found in possession of intermediate quantity of Ganja, a learned Single Judge of this Court had granted bail. The learned counsel for the petitioner pointed out that when one of the accused had been granted bail, then, the other accused who stood on the same footing should also be granted bail.

7.The learned counsel pointed out an order in ***Crl.O.P.No.11177 of 2024 dated 25.06.2024, Eswara Prasath Vs. The Inspector of Police***. In that case, it had been observed that an arguable point had been advanced whether the contraband was seized from one specific individual or from the joint possession of all the three accused.

8.In the instant case, a perusal of the case diary reveals that four separate seizure mahazars had been prepared by the respondent at the time of seizure of the contraband. From this petitioner, from a white colour plastic bag 22 Kgs of Ganja had been seized. Independently, from the 2nd, 3rd and 4th accused in three separate white colour plastic bags 10 Kgs of Ganja had been seized from each of them. This is a distinguishing factor.

9.The learned counsel for the petitioner pointed out that the



petitioner has been suffering incarceration from 17.03.2023 onwards and that trial had not yet been started. In this connection, he placed reliance on the order of the Hon'ble Supreme Court in ***SLP Crl. No.15840 of 2023, S.Venkatesan Vs. State, Represented by the Inspector of Police***, wherein, the Hon'ble Supreme Court had ordered as follows:

“Considering the period of incarceration already undergone by the petitioner which is about two years and the material placed on record, we are inclined to grant bail.

Accordingly, the petitioner be released on bail subject to such terms and conditions as may be imposed by the Trial Court.

The Special Leave Petition is, accordingly, disposed of.”

10.The learned counsel placed further reliance on yet another order of the Hon'ble Supreme Court in ***SLP. Appeal (Crl.) No.4173 of 2022, Shariful Islam @ Sarif Vs. The State of West Bengal***, wherein, the Hon'ble Supreme Court had ordered as follows:

“1.Heard the learned counsel appearing for the petitioner, learned counsel appearing for the State of West Bengal and carefully perused the material available on record.



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2. Taking into consideration the fact that the petitioner is resorted to be in custody since 27-1-2021 and has suffered incarceration for over 1 year 6 months and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the State, we are inclined to grant him bail.

3. The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the concerned Trial Court may deem fit and find appropriate to impose upon him.

4. The Special Leave Petition stands disposed of on the above terms.”

11. It is thus contended that the petitioner has suffered incarceration for more than one year and three months and since the trial had not yet started, he should also be considered for grant of bail.

12. In view of the stipulations under Section 37 of the NDPS Act, before granting bail for an offence under NDPS Act, twin conditions as provided under Section 37(1)(b) (i) and (ii) have to be satisfied. Section 37 of the N.D.P.S. Act is quoted herein below:



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"37. Offences to be cognizable and non-bailable. -

(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 sub-section (1) are in addition to the limitations under the Code of Criminal Procedure,



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1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

13.The Hon'ble Supreme Court had examined the expression 'reasonable grounds' as found in Section 37(1)(b)(ii) of NDPS, Act.

14.In ***Union of India Vs. Rattan Mallik @ Habul, 2009 (1) SCC (Crl) 831***, the Hon'ble Supreme Court has settled the expression “reasonable grounds”. The relevant paragraphs Nos.12, 13 and 14 are extracted below:

"12. It is plain from a bare reading of the nonobstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub- section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the



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alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari, 2007(7) SCC 798] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has



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committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."

15. The Hon'ble Supreme Court while dealing with the question of possession and application of Section 50 in the case of ***Megh Singh Vs. State of Punjab, 2003 CRI. L.J. 4329***, held that word 'possession' includes conscious possession. Relevant paragraph nos. 9 to 13 are extracted below:

"9. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52), to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.



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10. The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.

11. As noted in **Gunwantlal v. The State of M.P. (AIR 1972 SC 1756)** possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.

12. The word 'possession' means the legal right to possession (See **Health v. Drown (1972) (2) All ER 561 (HL)**). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See **Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD)**).

13. Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption



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available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in Madan Lal and Anr. v. State of Himachal Pradesh (2003 (6) SCALE 483)."

16. The Hon'ble Supreme Court in the case of ***Dehal Singh vs. State of Himanchal Pradesh, 2011 (72) ACC 661***, has again considered the concept of "conscious possession". In the said case, two accused persons were travelling in a car and they knew each other. From the windows/door of the said car, recovery of 27 Kgs. 800 gms. of charas was made, which were found concealed between the shields and doors of the car. The Hon'ble Supreme Court in the said case, taking into consideration the provisions of Sections 35 and 54 of the N.D.P.S. Act, had held that the accused was not only in possession, but conscious possession of the recovered contraband also.

17. It is thus seen that the Hon'ble Supreme Court had expanded the term possession to also include not just physical possession and constructive possession but also conscious possession.



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18. In *Union of India Vs. Ajaykumar Singh alias Pappu, 2023*

SCC OnLine SC 346, the Hon'ble Supreme Court had held as follows:

“13. In light of the above, the grant of bail to the above two accused persons - the driver of the vehicle and the helper, does not seem to be a good and sufficient reason for granting bail to the respondent-accused. The above two accused are not the main accused, but the vicarious agents of the respondent-accused, who is the main person in drug trafficking and was involved in the above illegal transactions. The role of the respondent-accused is clearly different from that of the driver and the helper, the other two co-accused. The co-accused Om Prakash Yadav in his affidavit filed in support of his bail application before the High Court admitted the involvement of the respondent-accused and his role as the mastermind of the illegal trade, as is evident from the order of his release on bail. Therefore, the High Court was not justified in releasing him on bail in the same manner as the above two accused persons.

14. This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section [37](#) of the [NDPS Act](#), which, inter alia, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public



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prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.

15. For the sake of convenience Section 37(1) is reproduced hereinbelow:—

“37. Offences to be cognizable and nonbailable.-

(1) Notwithstanding anything contained in the [Criminal Procedure Code, 1973 \(2 of 1974\)](#)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[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.”

16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable



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grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

17. The quantity of “ganja” recovered is admittedly of commercial quantity. The High Court has not recorded any finding that the respondent-accused is not prima facie guilty of the offence alleged and that he is not likely to commit the same offence when enlarged on bail rather his antecedents are indicative that he is a regular offender. In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.

18. In view of the aforesaid facts and circumstances and considering the role assigned to the respondent-accused and the illegality committed in releasing him on bail, we set aside the impugned final order dated 17.10.2022 passed by the High Court of judicature at Allahabad and allow the appeal.

19. 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. The petitioner had not satisfied any of the grounds under Section 37 of the NDPS Act. There is no change in circumstance from the previous date, on which the earlier petition for bail was dismissed.



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20. In view of the above reasons, I am not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

21. It is to be noted that the delay in commencement of trial is duly attributable only to the accused, as they had not even engaged any counsel to defend themselves.

22. A direction is given to the learned Trial Judge, if the accused had not yet engaged counsel, to appoint a counsel from the Legal Services Authority and endeavour to proceed further and dispose of the case at the earliest.

31.07.2024

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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,
T-13, Chitalapakkam Police Station,
Chennai – 600 064.
2. The Public Prosecutor,
High Court of Madras.



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C.V.KARTHIKEYAN, J.

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Crl.O.P.No.15462 of 2024

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