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CRL O.P. No.17536 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2024

CORAM

The Hon'ble Mr.Justice P.DHANABAL

CRL OP.No.17536 of 2024

Zhagir Husain S/o. Sulthan , ... Petitioner/Accused No.5
Vs

State rep. by:-

The Inspector of Police,
B-1 North Beach Police Station,
Chennai District. ... Respondent
[Cr. No.190 of 2022]

For Petitioner : Mr. D. Sugumar
For Respondent : Mr. S. Vinoth Kumar
Government Advocate
[Criminal side]

PETITION FOR BAIL Under Sec.483 of B.N.S.S.

PRAYER: - The Criminal Original Petition is filed under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023, praying to grant bail to the petitioner/Accused in [Crime No.190 of 2022 on the file of the respondent police] C.C. No.139 of 2023 on the file of Principal Special Judge, Special Court under EC & NDPS Act, Chennai.



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ORDER

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The petitioner/Accused no.5, who was arrested and remanded to judicial custody on 01.06.2022 for the offences punishable under sections 9(A), 22(C) and 25(A) of NDPS Act in C.C. No.139 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai, seeks bail.

2. The case of the prosecution is that the petitioner along with other accused had involved in the sale of Methamphetamine and Ephedrine in a Honda Activa vehicle opposite to HP Petrol Bunk near Rajaji Road, Indian Bank. On information, when the respondent police involved in patrol duty, they found one person on the vehicle and two others standing near the vehicle and they tried to escape and the respondent police arrested them and searched the vehicle. The respondent police found a bag with two other bags containing Ephedrine and Methamphetamine both weighing 1 kg each. The accused stated that they had purchased the same from two other persons for selling them. Hence, the case.

3. The learned counsel for the petitioner would contend that the



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respondent police have registered the false case against the petitioner alleging that the petitioner along with other accused was in possession of 1.750 kgs of Methamphetamine and 2 kgs of Ephedrine. Further the petitioner along with others filed a mandatory bail under Section 167(2) of Cr.P.C. before the trial Court on 15.12.2022 and the same was posted on 04.01.2023 for orders along with the petition filed under Section 36(A)(4) of NDPS Act and the trial Court passed a common order and the said statutory bail application was dismissed. Even as per the FIR, the petitioner was in possession of 1.750 kg of Methamphetamine and 2 kgs of Ephedrine and the contraband was seized from the petitioner is intermittent quantity and the accused A1 to A4 and A6 were released on bail by this court. Except this petitioner, all other accused were released on bail. Therefore, the petitioner is entitled to release on bail.

4. In support of his contention, the learned counsel appearing for the petitioner has relied on the following judgments:

(i) ***Raju vs. Inspector of Police, Kanagamma Chathiram Police Station.***



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(ii) Javed Gulam Nabi Shaikh vs. State of Maharashtra and another.

(iii) Union of India vs. Najeeb

(iv) Satender Kumar Antil v. Central Bureau of Investigation.

(v) Benoy Babu Antil v. Directorate of Enforcement.

(vi) Naeem Ahmed Alias Ahmed vs. Govt. of NCT of Delhi

(vii) Dheeraj Kumar Shukla vs. The State of Uttar Pradesh.

5. The learned Government Advocate (Criminal Side) would submit that the total quantity of contraband is 1.750 kg of Methamphetamine which comes under commercial quantity and 2 kgs of Ephedrine which is scheduled substance under NDPS Act. Already investigation was completed and charge sheet was also filed. Based on the confession statement of A3 Mohammed Sultan, which reveals that this petitioner along with other accused had purchased bulk contraband from unknown persons and sold the same in the local areas for their personal gain. This petitioner along with A3 and A6 were in two wheeler bearing Registration No.TN03 Q 5977 had kept in possession of 1 kg of



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Methamphetamine, which comes under commercial quantity and 2 kgs of Ephedrine and the respondent police arrested A3, A5 and A6. The samples were sent for chemical analysis and report was also received. Thereafter, investigation was completed and final report is filed. Already other accused have granted bail by this Court. The contraband seized in this case is of commercial quantity and hence it attracts Section 37 of the NDPS Act. Therefore, he strongly objected to grant bail to the petitioner and also he submitted the judgment of Hon'ble Supreme Court in ***Narcotics Control Bureau vs. Mohit Aggarwal.***

6. Heard both side and perused the materials available on record.

7. In this case, the respondent police have arrested the petitioner/accused on 01.06.2022 and also recovered 1 kg of Methamphetamine and 2 kgs of Ephedrine. Along with this petitioner, A3 and A6 were also arrested. Thereafter, A3 and A6 were granted bail by this Court. Already investigation was also completed and charge sheet was filed and the same is pending before the trial Court. As per the



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judgment submitted by the learned Government Advocate (Criminal side)

in the case of *Narcotics Control Bureau vs. Mohit Aggarwal*, the

Hon'ble Supreme Court held that *the length of the period of his custody*

or the fact that the charge sheet has been filed and the trial has

commenced are by themselves not considerations that can be treated as

persuasive grounds for granting relief to the respondent under Section

37 of the NDPS Act. In this case, though the charge sheet is filed, the

petitioner is in custody from 01.06.2022 and also the quantity is

commercial quantity. However, the co-accused were released on bail by

this Court for the same quantity on the ground that charge sheet has not

been filed and statutory bail was granted. Even after the filing of charge

sheet, the respondent police have not taken any steps and the respondent

police have not challenged the said order.

8. Therefore, taking into consideration that there is no previous case against the petitioner, that the respondent police have not challenged the earlier bail order passed by this Court by granting bail to the co-accused and by relying the judgments submitted by the petitioner, I am



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inclined to grant bail to the petitioner, subject to the following conditions:

[a] Accordingly, each of the petitioners 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 each for a like sum to the satisfaction of the **II Additional Special Court for EC & NDPS Act, Chennai** and on further conditions that:

[b] the petitioner shall report before the II Additional Special Court for EC & NDPS Act, Chennai on every working day at 10.30 A.M. until further orders.

[c] the petitioner shall not commit any offences of similar nature.

[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.

[f] On breach of any of the aforesaid conditions, the learned Judicial 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



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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 269 B.N.S.

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index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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P.DHANABAL,J
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- To
- 1.The II Additional Special Court for EC & NDPS Act, Chennai
 - 2.The Inspector of Police,
B-1 North Beach Police Station,
Chennai District.
 - 3.The Central Prison, Puzhal.
 - 4.The Public Prosecutor, High Court, Madras.



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