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CRL O.P. No.22705 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2024

CORAM

The Hon'ble Mr.Justice P.DHANABAL

CRL OP.No.22705 of 2024

Ananthi W/o. Nagendran

... Petitioner /Accused No.4

Vs

State rep. by:-

The Inspector of Police,
NIB-CID, Salem.

... Respondent

[Cr. No.50 of 2021]

PRAYER: - The Criminal Original Petition is filed under Section 439 of Code of Criminal Procedure, praying to grant bail to the petitioner/Accused in Crime No.50 of 2021 on the file of the respondent police.

For Petitioner : Mr. R. Vivekananthan

For Respondent : Mr.S. Vinoth Kumar

Government Advocate [Criminal side]

ORDER

The petitioner/Accused No.4, who was arrested and remanded to judicial custody on 30.12.2021 for the offences punishable under Sections 25, 29(1), 8(c) and 20(b)(ii)(C) of NDPS Act in Cr. No.50 of



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2021 on the file of the respondent police, seeks bail.

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2. The case of the prosecution is that on 28.11.2021 at about 5 a.m., during the routine vehicle check up, near yernapuram junction Thiruchengodu to Namakkal, a vehicle bearing registration No.TN36 S 8838 Bolero Picup was intercepted by the Nalipaalayam Police and found 140 pkts each contained 2 kgs of Ganja totally 279 kgs 900 grams. Hence the case.

3. The learned counsel for the petitioner would contend that the petitioner was arrested and remanded to judicial custody on 30.12.2021 alleging that she had possession of 60 kgs of Ganja, thereby she was arrested and remanded to judicial custody for the offences under Sections 25, 29(1), 8(c) and 20(b)(ii)(C) of NDPS Act, that as per the prosecution case, some other accused were arrested for the possession and transportation of of Ganja and based on the confession statement of other accused, a search was made and at that time, 60 kgs of Ganja was recovered from this petitioner. In fact, she has been falsely implicated in this case and she is in custody for more than 2 years and 9 months and



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already, the case has been taken on file as Special calendar case and now the case is posted for examination of witnesses and she is ready to co-operate for trial. Hence, he prayed to grant bail to the petitioner.

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

(i) *Rabi Prakash vs. State of Odisha reported in 2023 SCC Online 1109.*

(ii) *Ankur Chaudhary vs. State of Madhya Pradesh in Special Leave to Appeal (Crl) No.4648 of 2024.*

5. The learned Government Advocate (Criminal Side) would submit that when the respondent police were on patrol duty, they intercepted a Bolero vehicle bearing registration No.TN36 S 8838, wherein A1 and A2 had transported ganja of 280 kgs and based on their confession statements, they went to the place of occurrence and house of the petitioner and found that A4 and A5 had illegally possessed 60 kgs of Ganja and they were arrested and remanded to judicial custody and hence



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strongly opposed to grant bail to the petitioner.

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

7. Considering the rival submissions on either side, considering the fact this petitioner was arrayed as an accused based on the confession statement of co-accused and there is no specific allegations by the prosecution that from whom, the above said contraband has been recovered and also for the past 34 months, the petitioner is in judicial custody and there is no previous case pending as against the petitioner, also considering the fact that investigation was completed and the case is posted for examination of witnesses and also taken into consideration the judgments of Hon'ble Supreme Court in case of **Ankur Chaudhary vs. State of Madhya Pradesh**, wherein the Hon'ble Supreme Court held that *"it is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo*



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created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered' and the dictum laid down in the case in ***Rabi Prakash vs. State of Odisha reported in 2023 SCC Online SC 1109***, that *"The prolonged incarceration, general militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act"* and considering the facts and circumstances of the case, this Court is inclined to grant bail to the petitioner subject to the following conditions:

[a] 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 each for a like sum to the satisfaction of the learned **Special Judge for EC / NDPS Act Cases, Salem** and on further conditions that:

[b] the petitioner shall report before the concerned NDPS Court daily at 10.30 a.m. until further orders.



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[c] the petitioner shall not commit any offence similar to the offence of which he is accused, or suspected, or of the commission of which he is suspected;

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

[e] the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence;

[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 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



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registered under Section 229A IPC.

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index: Yes/No

Internet: Yes/No

Speaking/Non Speaking order

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To

- 1.The Special Judge for EC / NDPS Act Cases, Salem
- 2.The Public Prosecutor, Madras High Court, Chennai.
- 3.The Inspector of Police, NIB-CID, Salem.
4. The Superintendent of Police, Central Prison, Salem.

P.DHANABAL,J

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