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Crl.O.P.No.24886 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

CORAM:

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

Crl.O.P.No.24886 of 2024

Prakash

...Petitioner

-Vs -

State Represented by
The Inspector of Police,
NIB CID, Salem,
Salem District.
(Spl. C. C. No.3 of 2022)

...Respondent

Prayer: Criminal Original Petition filed under Section 439 of Cr.P.C.,
prayed to enlarge the petitioner on bail in respect of Spl C. C. No.3 of
2022 on the file of the Special Judge for EC / NDPS Act Cases.

For Petitioner : Mr. S. Prabhu

For Respondent : Mr.S. Balaji
Government Advocate (Crl. Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody
on 18.11.2021, for the offence under Sections 8(c) r/w 20(b)(ii)(c) of the
Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter
referred to as “NDPS Act”) in Crime No.42 of 2021 on the file of the
respondent police, seeks bail.

2. The case of the prosecution is that when the respondent



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police were on routine vehicle checkup on 18.11.2021, the petitioner was found with possession of 21 Kg of Ganja at Salem Railway Station. Hence, the case was registered against the petitioner.

3. The learned counsel appearing for the petitioner submitted that a false case has been foisted as against the petitioner. He also submitted that the petitioner was arrested and remanded to judicial custody on 18.11.2021 and hence, he prays for grant of bail to the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police submitted that the petitioner was found in possession of 21 Kg of Ganja. Now, the trial has been commenced. Hence, he vehemently opposed to grant bail to the petitioner.

5. Though this Court directed the Trial Court to complete the trial within a stipulated time on several occasions, due to various reasons, the Trial Court did not able to complete the trial as directed by this Court.

6. In this regard, it is relevant to extract the judgment of the Hon'ble Supreme Court of India reported in **2023 Live law (SC) 260** in



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the case of ***Mohd Muslim @ Hussain Vs State (NCT of Delhi)***, wherein

the Hon'ble Supreme Court of India held as follows:-

"18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the Court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, Cr.P.C) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further, the classification of offences under Special Acts (NDPS Act, etc.,) which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of



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the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape etc.,. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This Court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the Court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the Court would look at the material in a broad



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manner, and reasonably see whether the accused's guilt may be proved. The judgements of this Court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India vs Rattan Malik 19). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

Thus, it is clear that grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too.

7. 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 directed to deposit an amount of Rs.50,000/-



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(Rupees Fifty Thousand only) by way of Demand Draft to the Arignar Anna Memorial Cancer Hospital & Research Institute, Kancheepuram and also taking note of the fact that the petitioner is in judicial custody from 18.11.2021, this Court is inclined to grant bail to the petitioner with certain conditions:

8. 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 Judicial Magistrate - II, Salem 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;



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[c] the petitioner shall appear before the trial Court daily at 10.30 a.m and 5.30p.m. till the disposal of the Trial.

[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 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 registered under Section 229A IPC.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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G.K.ILANTHIRAIYAN. J.

ab

To

1. The Judicial Magistrate II, Salem.
2. The Inspector of Police,
NIB CID, Salem,
Salem District.
3. The Central Prison, Salem.
4. The Public Prosecutor,
High Court of Madras,
Chennai.

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