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Crl.O.P.No.26256 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.No.26256 of 2023

A.Moinudeen Buhiya @ A.Meinudhin Buhiah
@ A.Mynudin Bhuhiah

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
J9 Thuraipakkam Police Station.
Chennai.

(Crime No.791 of 2021).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner/accused on bail, in respect of C.C.No.166 of
2022 on the file of the learned Special Judge, II Additional Special Court for
Exclusive Trial of cases under NDPS Act, Chennai in Crime No.791 of 2021.

For Petitioner : Mr.K.A.M.Jagadishkumar

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



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ORDER

The petitioner who was arrested and remanded to judicial custody in C.C.No.166 of 2022 pending trial on the file of the learned Special Judge, II Additional Special Court for Exclusive Trial of cases under EC & NDPS Act, Chennai, in connection with Crime No.791 of 2021 registered for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985, and later amended to 8(c) r/w 20(b)(ii)(C) & 29(1) of NDPS Act seeks bail.

2. The case of the prosecution is that on 08.12.2021, at about 08.35 hours, on receipt of a secret information about the illegal transport of Narcotic Substance, the Sub-Inspector of Police along with his team went to the place of occurrence, wherein, the petitioner along with the other accused was found in illegal transportation of 21.5 kilograms of Ganja and the respondent have seized the contraband and arrested the accused. After completion of investigation, final report has been filed and the case has also been taken up for trial in C.C.No.166 of 2022, on the file of the learned Special Judge, II Additional Special Court for Exclusive Trial of cases under EC & NDPS Act, Chennai.



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3. Learned counsel appearing for the petitioner submitted that this is the fourth application for bail filed by the petitioner (A3) before this Court. During the hearings on earlier bail applications, since certain important facts and aspects were not put forth by the petitioner, this Court was made by the prosecution to wrongly construe that the quantity of contraband recovered was 21.5 kilograms, which is a commercial quantity. Thereby, this Court had dismissed the earlier applications for bail.

4. He further submitted that after completion of investigation, the case has been taken up for trial in C.C.No.166 of 2022, on the file of the learned Special Judge, II Additional Special Court for Exclusive Trial of cases under EC & NDPS Act, Chennai and the prosecution has filed an application in Crl.M.P.No.1968 of 2023 under Section 52A of NDPS Act seeking to certify the correctness of samples recovered and to dispose the property seized in Crime No.791 of 2021. As per prosecution, five gunny bags with contraband were stated to have been recovered from the accused and the trial Court has weighed five fold in yellow plastic gunny bags believed to be Ganja which is marked as P1 to P5 and the sample taken from



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P1 to P5 were marked as CS1 to CS5. The weight of P1 to P5 calculated works out to 19.09 kilograms as mentioned below.

<i>S.No</i>	<i>Contraband in Five Yellow Plastic Gunny bags</i>	<i>Weight in Kgs</i>
1.	P1	4.120
2.	P2	3.890
3.	P3	3.870
4.	P4	3.780
5.	P5	3.430
Total		19.09

5. Learned counsel for the petitioner further submitted that the entire weight of the seized contraband is about 19.09 kilograms, which is lesser than the commercial quantity. Further, the contraband is alleged to have been recovered from the petitioner and other two persons, whereas, there is no nexus between the petitioner and the other two accused. He further submitted that the petitioner is suffering long incarceration from 08.12.2021. Since the case has been taken up for trial, the petitioner has to engage the counsel to conduct his case in an effective manner. He also submitted that the similarly placed co-accused named Kabeer Hussain has been granted bail by this Court in Crl.O.P.No.18795 vide order dated 08.11.2023 and the



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petitioner also stands on the same footing.

6. He further submitted that the petitioner is hailing from Tripura and that either his father or brother is ready to stand as surety to him and the petitioner is also ready to cooperate for speedy disposal of the trial. He also submitted that the petitioner is aged about only 25 years and is suffering incarceration for more than two years and thereby, he seeks for bail.

7. Learned Government Advocate (Crl.Side) submitted that as per the First Information Report, it is a case of recovery of commercial quantity of 21.5 kgs of Ganja and this Court finding that the petitioner has not satisfied the twin conditions required under Section 37 of NDPS Act and since the petitioner is a resident of Tripura, apprehending that he may not be available for trial, had dismissed the earlier bail applications. However, the learned Government Advocate (Crl.Side) fairly conceded that in the application filed under Section 52 A of NDPS Act in Crl.M.P.No.1968 of 2023, seeking to certify the correctness of samples and to dispose the property seized, it has been found that the weight of the contraband along with Gunny bags make out only to 19.09 kilograms, which is lesser than the commercial



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quantity. He further submitted that as on date, the case is ripe for trial and there are only 6 witnesses in the case and he also submitted that the prosecution would be able to complete the trial within a specified time. Thereby, he sought for dismissal of the bail application.

8. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl.Side) and perused the materials available on record.

9. It is seen that the petitioner was arrested on 08.12.2021 and he is still in judicial custody. On the submissions made by the prosecution that the total amount of contraband seized is about 21.05 kilograms, this Court had dismissed the earlier bail applications filed by the petitioner. Now, admittedly, as per the petition filed by the prosecution in Crl.M.P.No.1968 of 2023 under Section 52A of NDPS Act, it is submitted by the prosecution that the total weight of the contraband along with the gunny bags is about 19.09 kilograms, which is lesser than the commercial quantity.

10. Taking into consideration the above facts and circumstances of



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the case that the contraband seized is lesser than the commercial quantity, taking note of the fact that the similarly placed co-accused has been granted bail by this Court and also considering the fact that the petitioner is suffering long incarceration from 08.12.2021, this Court is inclined to grant bail to the petitioner with certain conditions.

11. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.25,000/- (Rupees Twenty five thousand only)** with **two sureties (out of which, one surety should be either the father or brother of the petitioner)**, for a like sum to the satisfaction of the **learned learned Special Judge, II Additional Special Court for Exclusive Trial of cases under EC & NDPS Act, Chennai**, and on further conditions that:

[a] the sureties shall produce the proof to show their permanent residence;

[b] 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;

[c] the petitioner shall appear before the learned Special Judge, II Additional Special Court for



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Exclusive Trial of cases under EC & NDPS Act, Chennai, on all working days at 10.30 a.m., until further orders;

[d] the petitioner shall not abscond during trial;

[e] the petitioner shall not tamper with evidence or witness during 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 abscond, a fresh FIR can be registered under Section 229A IPC.

31.01.2024

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To

1. The Special Judge,
II Additional Special Court for Exclusive Trial
of cases under EC & NDPS Act,
Chennai,
2. The Inspector of Police,
J9 Thuraipakkam Police Station,
Chennai.
3. The Central Prison,
Puzhal - II, Chennai.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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