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CRL O.P. No.24635 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.10.2024

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THE HON'BLE MR.JUSTICE P.DHANABAL

CRL OP.No.24635 of 2024

K.Rani

... Petitioner

Vs

State rep. by its,
Inspector of Police,
NIB – CID, Salem P.S.
(Crime No.50 of 2021)

... Respondent

PRAYER: - The Criminal Original Petition is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, (BNSS) 2023, praying to enlarge the Petitioner on bail in Special C.C.No.76 of 2022, on the file of the learned Special Judge for EC/NDPS Act Cases, Salem pending trial.

For Petitioner : Mr.R.Rajan

For Respondent : Mr.S.Vinothkumar
Government Advocate
(Criminal Side)



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ORDER

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The petitioner/Accused No.3, who was arrested and remanded to judicial custody on 29.11.2021 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C) 29 (1), 25 of NDPS Act in Crime No.50 of 2021 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 28.11.2021 at about 5a.m., during the routine vehicle check up, near yernapuram junction, Thiruchengodu to Namakkal, a vehicle bearing registration No.TN36 S8838 Bolero Picup was intercepted by the Nalipaalayam Police and found 140 packets each contained 2 kgs of Ganja totally 279 kgs 900 grams. Hence the case.

3.The learned counsel for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would further submit that the investigation has been completed and charge sheet was also filed. Trial has not commenced till date. The petitioner is in custody for nearly 3 years. The co-accused was released on bail on the ground that trial was not commenced. He would also



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submit that the petitioner is ready to abide by any stringent condition that may be imposed by this Court. Hence, he prays for grant of 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 to A3 had transported ganja of 280 kgs and based on their confession statements, they went to the place of occurrence and house of the A4 and found that A4 and A5 had illegally possessed 60 kgs of Ganja and they were arrested and remanded to judicial custody. The contraband involved in this case is commercial quantity and the petitioner has not complied the conditions of Section 37 of NDPS Act and hence strongly opposed to grant bail to the petitioner.



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

7. Considering the rival submissions on either side, considering the fact that the co-accused was released on bail and also for the past 35 months, the petitioner is in judicial custody and also considering the fact that investigation was completed and the case is posted for examination of witnesses and the trial has also not commenced and also taking 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 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 SC1109**, 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 **Special Judge for EC / NDPS Act Cases, Salem** and on further conditions that;

[b] the Petitioner shall report before the Special Judge for EC / NDPS Act Cases, Salem daily at 10.30 a.m., until further orders.

[c] the Petitioner shall not commit any offences of 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, 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;

[e] the Petitioner shall not abscond 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]; and

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 B.N.S.

23.10.2024

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To

1.The Special Judge for EC / NDPS Act Cases,
Salem.

2.Central Prison for Women, Salem.

3.The Inspector of Police,
NIB – CID, Salem P.S.
(Crime No.50 of 2021)

4.The Public Prosecutor, High Court, Madras.



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P.DHANABAL,J.
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