



CrI.O.P.No.25893 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2024

PRONOUNCED ON : 29.02.2024

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No.25893 of 2024

Selvam

... Petitioner

Vs.

State represented by
The Intelligence Officer,
Narcotics Control Bureau,
Chennai – Zone,
Chennai – 600 077.

PRAYER: This Criminal Original Petition filed under Section 439 of Cr.P.C., prayed to enlarge the petitioner on bail in C.C.No.524 of 2022 now pending trial on the file of the learned Principal Sessions Judge, Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

For Petitioner : Mr.C.Rajan for Mr.V.K.Sathiamurthy,

For Respondent : Mr.N.P.Kumar,
Spl. Public Prosecutor (NCB)



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ORDER

The petitioner is A6 in R.R.No.1 of 2022, registered by the respondent for the offence under Sections 8(c) r/w 20(b)(ii)(C), 27A, 28 & 29 of NDPS Act, seeks bail.

2.It is stated that investigation has been completed and final report had been filed and the same had been taken cognizance as C.C.No.524 of 2022 and charges have also been framed. I am informed that P.W.1 in the witness box and has been examined.

3.It is contended by the learned counsel for the petitioner that from A2 and A3, 369 kgs of ganja had been seized on 08.01.2022. He pointed out that the seized contraband had been forwarded to the Court only on 25.01.2022 and insisted that this delay is a ground to be considered for grant of bail. Quite apart from that, it is stated that there have been no recovery from this petitioner/A6.



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4.It had been contended that statements of A1, A2 and A3 had been recorded under Section 67(2) of NDPS Act. It had been stated that if those particular statements are verified by this Court then there would be no material at all to implicate the present petitioner for any of the offences alleged. It had also been stated that the ganja which had been seized were kept in a gunny bag and samples had not been taken in the presence of the Magistrate, as required under Section 52A of the NDPS Act.

5.It had also been stated that the samples had been taken from a heterogeneous mixture of dust and ganja leaves and small twigs which were found and therefore, it is contended that the samples would not be a proper representation of the whole. It had also been stated that this method of taking samples is in violation of guidelines 1/88 and 1/89 of NCB with respect to taking of samples.

6.A Counter affidavit had been filed on behalf of the respondent and the learned Government Advocate (Crl. Side) stated that they are in possession of call detail records which provided direct link among all the accused. It had also been stated that call detail records has been presented as documents along with charge sheet.



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7.A further counter affidavit had been filed wherein, it had been stated that the samples from the seized contraband were drawn in the presence of the Judicial Magistrate, Ponneri along with Test Memo in triplicate on 10.01.2022, only after filing a petition seeking drawal of samples. It had been very specifically stated that the samples had been drawn in accordance with the guidelines issued in the Standing Order No.1/89 and that it represents the entire seized quantity of contraband.

8.With respect to the contention that there were no materials available to implicate the petitioner apart from the statements recorded under Section 67(2) NDPS Act, it had been contended that analysis of the mobile phone of this petitioner namely, 94404 21978 reveal that he was in continuous contact with A1 whose mobile number is 70327 82537. It had been therefore stated that this fact established the primary contact between the petitioner and the other accused. Further, the tower location of each person as per CDR received established that they had reached Nellore, Andhra Pradesh and then out of the ten accused the first accused and two other accused had been intercepted with possession of 369 kgs of Ganja at



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Nallur Toll Plaza, Chennai and the other accused were apprehended at Trichy. It had been reiterated that the trial in the case has progressed and as on January 2024, only three witnesses remain to be examined and therefore, enlarging the petitioner on bail will provide an opportunity to abscond from judicial process. It had therefore been stated that the application should be dismissed.

9.The learned counsel for the petitioner, relied on the judgment of the Hon'ble Supreme Court reported in **(2021) 20 SCC 50, *Bharat Chaudhary Vs. Union of India***, wherein it had observed as follows:

“14. In the absence of any psychotropic substance found in the conscious possession of A-4, we are of the opinion that mere reliance on the statement made by A-1 to A-3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15-7-2021 [Union of India v. Bharat Chaudhary, 2021 SCC OnLine Mad 6554] . This is all the more so when such a reliance runs contrary to the ruling in Tofan Singh [Tofan Singh v. State of T.N., (2021) 4 SCC 1 : (2021) 2 SCC (Cri) 246] . The impugned order [Union of India v. Bharat Chaudhary, 2021 SCC OnLine Mad



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6554] qua A-4 is, accordingly, quashed and set aside and the order dated 2-11-2020 passed by the learned Special Judge, EC & NDPS cases, is restored. As for Raja Chandrasekharan (A-1), since the charge-sheet has already been filed and by now the said accused has remained in custody for over a period of two years, it is deemed appropriate to release him on bail, subject to the satisfaction of the trial court. ”

10.The learned counsel for the petitioner, then relied on the judgment reported in **2023 3 Crimes(SC) 168, Simarnjit Singh Vs. State of Punjab**, wherein the Hon'ble Supreme Court had observed as follows:

“10. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of Union of India Vs. Mohanlal & Anr, [\(2016\) 3 SCC 379](#). This creates a serious doubt about the prosecution's case that substance recovered was a contraband. ”

11.The learned counsel for the petitioner, further relied on the judgment reported in **2023 SCC OnLine SC 352, Mohd. Muslim alias Hussain Vs. State (NCT of Delhi)**, wherein the Hon'ble Supreme Court had



observed as follows:

14. In a recent decision, while considering bail under the [Unlawful Activities Act \(Prevention\) Act, 1967](#), this court in [Union of India v. K.A. Najeeb](#)¹⁴ observed that:

“12. Even in the case of special legislations like the [Terrorist and Disruptive Activities \(Prevention\) Act, 1987](#) or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in [Paramjit Singh v. State \(NCT of Delhi\)](#), [\(1999\) 9 SCC 252](#)], [Babba v. State of Maharashtra](#), [\(2005\) 11 SCC 569](#) and [Umarmia v. State of Gujarat](#), [\(2017\) 2 SCC 731](#) enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”

15. The court concluded that statutory restrictions like Section [43-D\(5\)](#) of the [UAPA](#), cannot fetter a constitutional court's ability to grant bail on ground of violation of fundamental rights.



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22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

*23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State* (1993 Cri LJ 3242 as “a radical transformation” whereby the prisoner:*

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”



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24. *There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see Donald Clemmer's ‘The Prison Community’ published in 1940. Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.*

12. The learned counsel for the petitioner also placed relied on the judgment reported in **2023 LiveLaw (SC) 533, Rabi Prakash Vs. The State of Odisha**, wherein the Hon'ble Supreme Court had observed as follows:

“4. As regard to the twin conditions contained in Section [37](#) of the [NDPS Act](#), learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the



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2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally 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](#).”

13.The learned Spl. Public Prosecutor placed reliance on the judgment of the Hon'ble Supreme Court in ***SLP (Crl.) No. 8137 of 2022***, dated ***14.02.2024, State By The Inspector of Police Vs. B. Ramu***, wherein the Hon'ble Supreme Court had held as follows:

“8. Section 37 of the NDPS Act deals with bail to the accused charged in connection with offence involving commercial quantity of a narcotic drug or psychotropic substance. The provision is reproduced hereinbelow for the sake of ready reference:

“[37. Offences to be cognizable and nonbailable.—(1)

Notwithstanding anything contained in the Code of Criminal



Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail]”

9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are



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grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

10. It is apposite to note that the High Court not only omitted to record any such satisfaction, but has rather completely ignored the factum of recovery of narcotic substance (ganja), multiple times the commercial quantity. The High Court also failed to consider the fact that the accused has criminal antecedents and was already arraigned in two previous cases under the NDPS Act.

11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act.

13.

14. The fact that after investigation, the charge sheet has



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been filed against the respondent-accused along with other accused persons, fortifies the plea of the State counsel that the Court could not have recorded a satisfaction that the accused was prima facie not guilty of the offences alleged.”

14.It must also be stated that a memo had been filed on behalf of the accused stating that the petitioner had filed an application under Section 311 Cr.P.C., to recall PW-1 to PW-3 for cross-examination. This memo has been filed to express bonafide that the petitioner would participate in the trial process. A further memo had also been filed by the learned counsel for the petitioner that the wife of the petitioner and the cousin sister of the petitioner are willing to stand as sureties. This memo has been filed to emphasise that the petitioner would not abscond from judicial process.

15.In the counter affidavit filed by the respondent, it had been further stated that there are five previous cases against the petitioner and out of them three cases are for trial for the offences under Section NDPS Act.

16.With respect to that particular statement made by the



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respondent, the learned counsel for the petitioner had produced a judgment of the learned Sessions Judge for Special Court for Essential Commodities Act, Thanjavur, wherein, by judgment dated 18.07.2023 in C.C.No.6 of 2020, the petitioner who had been arrayed as A4 had been acquitted of charges under Section 20(b)(ii)(C), 29(1) and 25 of NDPS Act in FIR in Crime No.48 of 2019. With respect to the two other cases, it had been stated that with respect to FIR in Crime No. 46 of 2019 registered by the Dindugal Town (North Police Station) under Sections 20(B)(ii)(B), 25, 29, 8(C) of NDPS Act that the Calender Case Number had not been given by the respondent. In the other case, registered by the Chennai Triplicane, Anna Square Police Station in FIR in Crime No.1417 of 2019 for the offence under under Sections 20(b)(ii)(b), 8(c) of NDPS Act, the petitioner had been produced on execution of PT warrant. It had therefore been contended that the petitioner had been acquitted of the only earlier cases where trial had been conducted. It had therefore been stated that the petitioner should be released on bail.

17.I have carefully considered the rival contentions. The petitioner had been remanded to custody on 09.01.2022. On 08.01.2022, the respondent



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had received information about transportation of Ganja in a Bolero Pickup car bearing Reg. No. TN-72-AV-4700 with an escort vehicle in Maruti Swift bearing Reg. No. TN-10-AL-1816 going to Trichy via Chennai. The two vehicles were intercepted at Karanodai Toll Plaza and A1, A2 and A3 had been apprehended from the Bolero vehicle and 369 kgs of Ganja had been seized. The persons apprehended were arrested under the provisions of NDPS Act. Thereafter, they informed that the leaders of their drug trafficking organisation were two persons namely, R.V.K.Sekar and this petitioner Selvam and stated that both the named persons along with five others were assembled at Hotel Udhaya Udipi at Trichy to receive the consignment. Based on that information, the respondent had proceeded to Trichy and all the seven persons including this petitioner who was subsequently arrayed as A6 were apprehended and remanded to custody on 09.01.2022. Investigation had been completed and final report had been filed. It had been taken cognizance as C.C.No.524 of 2022 before the Special Court for NDPS cases, Chennai as early as July 2022.

18.During investigation, it had been stated that this petitioner had received Rs.80,000/- from A4 R.V.K.Sekar to supply the Ganja packets.



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Subsequently, this petitioner left to Andhra Pradesh to arrange the Ganja and obtained them from one Chellapandi. Thereafter, A1, A2 and A3 also came to Andhra Pradesh in a Mahindra Bolero pick up vehicle and since they were not able to procure the Ganja, this petitioner had asked them to transport the Ganja purchased by him to Trichy. All the accused decided to share the contraband among themselves and sell it for profit. This vehicle and the escort vehicle were later intercepted by the respondent. It is also the specific case of the respondent, that this petitioner had also identified the co-accused A4, R.V.K.Sekar and Mathiyazhagan.

19.It is thus seen that the entire conspiracy was well planned and each one of the accused had a specific role in purchase, transportation and receiving of the Ganja. It is therefore only appropriate that the prosecution is given opportunity to establish the case through oral and documentary evidence. The web of conspiracy alleged can always be tested during cross-examination of the prosecution witnesses. It is also seen that the respondent had collected the call details interlinking the accused and therefore, *prima facie*, there is material available to proceed further with the trial of the case. On the contrary, there are no reasonable grounds to hold there is possibility



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of the petitioner being acquitted of the charges.

20. The Hon'ble Supreme Court had examined the expression 'reasonable grounds' as found in Section 37(1)(b)(ii) of NDPS, Act.

21. In *Union of India Vs. Rattan Mallik @ Habul, 2009 (1) SCC (CrI) 831*, the Hon'ble Supreme Court has settled the expression “reasonable grounds”. The relevant paragraphs Nos.12, 13 and 14 are extracted below:

"12. It is plain from a bare reading of the nonobstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any



offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari, 2007(7) SCC 798] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen



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is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."

22. The Hon'ble Supreme Court while dealing with the question of possession and application of Section 50 in the case of **Megh Singh Vs. State of Punjab, 2003 CRI. L.J. 4329**, held that word 'possession' includes conscious possession. Relevant paragraph nos. 9 to 13 are extracted below:

"9. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52), to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.



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10. The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.

11. As noted in **Gunwantlal v. The State of M.P. (AIR 1972 SC 1756)** possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.

12. The word 'possession' means the legal right to possession (See **Health v. Drown (1972) (2) All ER 561 (HL)**). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See **Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD)**).

13. Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption



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available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in Madan Lal and Anr. v. State of Himachal Pradesh (2003 (6) SCALE 483)."

23. It is thus seen that the Hon'ble Supreme Court had expanded the term possession to also include not just physical possession and constructive possession but also conscious possession.

24. The learned counsel for the petitioner questioned the manner in which the samples were taken and claimed that it was not in conformity with Section 52(A) of NDPS Act or with the rules or guidelines governing seizure and taking of samples.

25. It must be kept in mind that Section 2(iii)(b) and (c) define Ganja and it is as follows:

"(b)ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not



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accompanied by the tops), by whatever name they may be known or designated; and

(c)any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom; (iv) “cannabis plant” means any plant of the genus cannabis;”

Thus an expansive definition had been.

26.With respect to the allegation that guidelines for taking of samples had been violated, it the specific case of the respondent that the samples had been drawn after obtaining permission from the Judicial Magistrate, Ponneri, in compliance of Section 52(A) of NDPS Act. The methodology under which the samples were taken will have to be tested during cross-examination. The Court can never presume that the samples were not taken in accordance with the guidelines.

27.In this instant case, this petitioner was arrested on the very next day after the seizure of the Ganja and was present along with the other co-accused. Further there is evidence of monetary transactions being received by this petitioner from the co-accused. There is also the call detail records



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given a direct link between this petitioner and A1. Further, the tower had also been traced and it emanated from Nellore in Andhra Pradesh and therefore, there is material available apart from the statement under Section 67 of the 1st accused. All these materials will have to be tested during the course of cross-examination.

28.Further, as held by the Hon'ble Supreme Court, *“the fact that after investigation, the charge-sheet has been filed against the respondent-accused along with other accused persons, fortifies the plea of the State counsel that the Court could not have recorded a satisfaction that the accused was prima facie not guilty of the offences alleged.”* (B.Ramu referred *supra* in SLP(Crl. No.8137 of 2022)

29.It is also seen that trial had progressed to a substantial extent. Therefore, the responsibility is now cast on the learned Session Judge to analyse the evidence presented and pass final judgment. Any opinion expressed now would certainly prejudice the mind of the learned Session Judge. Even though the learned counsel stated that in the earlier case, the petitioner had been acquitted, the fact is there are two further cases still



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pending against the petitioner both under NDPS. Therefore, the possibility of the petitioner indulging in sale of narcotics cannot be ruled out. The statement that the wife and cousin sister of the petitioner are prepared to stand as sureties would not come to the advantage of the petitioner at this stage.

30.In view of these reasons, I am not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

29.02.2024

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Index : Yes / No

Neutral Citation : Yes / No

Speaking Order : Yes / No

To

1.The Intelligence Officer,
Narcotics Control Bureau,



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Chennai – Zone,
Chennai – 600 077.

2.The Public Prosecutor,
High Court of Madras.

C.V.KARTHIKEYAN, J.

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