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Crl.O.P.No.27231 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

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

Crl.O.P.No.27231 of 2024

Chella @ Selvakumar

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
M-2, M.M Colony Police Station,
M.M Colony, Chennai – 600 049.
C.C.No.531 of 2024).

... Respondent

PRAYER : Criminal Original Petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, pleased to enlarge the petitioner on bail, in C.C.No.531 of 2024 in connection with Crime No.442 of 2023, on the file of the respondent Police.

For Petitioner : Mr.J.Prakash

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

ORDER

Petition seeking bail in respect of C.C.No.531 of 2024 in connection with Crime No.442 of 2023 registered for the offences punishable under Sections 8(c), read with Sections 20(b)(ii)(C), 25 and 29(1) of NDPS Act, 1985 read with Section 120B of IPC.



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2. The incarceration of the petitioner being from 20.12.2023 pleading innocence on the part of the petitioner and false implication in the case, learned counsel for the petitioner seeks indulgence of this Court. He also submits that, other than the confession statement recorded from the other accused that the petitioner has financed Rs.4 lakhs for the purpose of purchasing ganja, there is no other material by way of bank or other transaction to show that the petitioner has financed Rs.4lakhs to them. He further submits that the petitioner is ready to abide by any stringent condition that may be imposed by this court.

3. In support of his submission, the learned counsel for the petitioner relied on the following judgements:

(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

4. The case of the prosecution as putforth by the learned Government Advocate (Criminal Side) appearing for the respondent police, opposing for grant of bail, is that on 27.06.2024, Mahendra XUV500 bearing Reg.No.TN14 S2540



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was intercepted and four persons were found travelling and on search, they were found to transport 117 kgs of ganja, based on the same, case in Crime No.442 of 2023 came to be registered under Sections 8(c) read with Section 20(b)(ii)(C), 25, 29(1) of NDPS Act and 120(B) of IPC, during the course of the investigation, it came to light that the petitioner has financed Rs.4 lakhs to other accused for the illegal trade and thereby he was arrested and the respondent after completion of investigation has filed final report and the case is now pending in C.C.No.531 of 2024 on the file of the Principal Special Court under EC & NDPS Act, Chennai.

5. Having heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent Police and perused the materials available on record, and taking note of the fact that the investigation is completed and the charge sheet has been filed and also taking into consideration the judgements of the 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,*



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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) of the NDPS Act* and also considering the fact that the except the confession statement recorded from A1 to A3 that the petitioner has financed Rs.4 lakhs for the illegal trade, there is no other material to connect the petitioner in this case and that the petitioner has no similar previous case, this court is inclined to grant bail to the petitioner with certain conditions and accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.15,000/- (Rupees Fifteen Thousand only)** with **two sureties**, each for a like sum to the satisfaction of the learned **Principal Special Court under EC & NDPS Act, Chennai**, and on further conditions that:

[a] the sureties shall affix their photographs and Left



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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 report before the Principal Special Court under EC & NDPS Act, Chennai, on all working days at 10.30.a.m., .. until further orders;

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

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial;

[e] 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]***;

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

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A.D.JAGADISH CHANDIRA.,J.

Sma

To

1. Principal Special Court under EC & NDPS Act, Chennai,
2. The Inspector of Police,
M-2, M.M Colony Police Station,
M.M Colony, Chennai – 600 049.
3. The Superintendent,
Salem Central Prison
4. The Public Prosecutor,
High Court of Madras.

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