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Crl.O.P.No. 28798 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.10.2024

PRONOUNCED ON : 20.12.2024

CORAM

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

Crl.O.P.No. 28798 of 2024

K.Ganesh Babu

... Petitioner/
Accused No.3

Vs.

State Rep. by
Inspector of Police
F-3, Arambakkam Police Station
Thiruvallur District.
Crime No. 114 of 2022.

... Respondent

PRAYER: Criminal Original Petitions filed under Section 483 of BNSS, pleaded to enlarge him on bail pending in C.C.No. 187 of 2023 before the Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr. M.G.Martinmanivannan

For Respondent : Mr.R.Vinoth Raja
Government Advocate (Crl.Side)



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ORDER

This Petition seeking bail had been filed by A-3 in C.C.No. 187 of 2023 pending before the Principal Special Court for Exclusive Trial of Cases under NDPS Act at Chennai.

2. The respondent had initially registered FIR in Cr.No.114 of 2022 for offences punishable under Sections 8(c), 20(b)(ii)(C), 25 and 29(1) of NDPS Act 1985 on 28.05.2022. The petitioner had been arrayed as an accused on the confession of the first accused. The petitioner had been remanded to custody on 28.12.2022.

3. It is the case of the prosecution that on 28.05.2022 at around 4.30 p.m., secret information had been received about transportation of ganja. The information had been entered in the general diary. The respondent then intercepted a mini lorry bearing Registration No. MH. 05-AM-1243 near Arambakkam Police Station, opposite GNT Road, Check Post. The first accused, driver of the vehicle was found in possession of 235 kgs of ganja. He was arrested and remanded to custody. The seized materials were also produced before the Principal Special Court for EC and NDPS Act



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cases at Chennai. FIR in Crime No. 114 of 2022 had been registered for offences punishable under Sections 8(c), 20(b)(ii)(C), 25 and 29(1) of NDPS Act 1985.

4. It had been stated that the first accused revealed that the contraband was being transported from Andhra Pradesh to Madurai under instructions of the present petitioner, who had been arrayed as A-3. It was then stated that subsequently, the second accused was also arrested. This accused was arrested on 22.12.2022 and remanded to custody.

5. After completion of investigation, final report was filed before the Principal Special Court for EC and NDPS Act cases at Chennai and the same was taken cognizance as C.C.No. 187 of 2023. The case is still pending.

6. It had been further stated that this petitioner was involved in two earlier cases of similar nature. The first case was registered at Keerathur Police Station in Madurai in Crime No. 690 of 2019 for offences punishable under Sections 8(C) read with 20(b)(ii)(B), 25, 29(1) of NDPS Act and the



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second case was registered in Andhra Pradesh by Prathipadu Police Station in Crime No. 228 of 2022 for offences punishable under Section 8(C) read with 20(b)(ii)(C) of NDPS Act. It had been stated that therefore, the petitioner has previous cases of similar nature against him. The quantity seized is also commercial in nature and it had therefore been contended that bail should be rejected.

7. The learned counsel for the petitioner however pointed out that the second accused had been granted bail by the Hon'ble Supreme Court in SLP (Criminal) No. 4523 of 2024 by order dated 14.08.2024. It had been noted by the Hon'ble Supreme Court that the second accused had been remanded to custody only on the confession of the first accused. The learned counsel therefore stated that this petitioner was also similarly placed like the second accused, as this petitioner was also arrested only on the confession of the first accused and therefore argued that similar relief should be granted to this petitioner.

8. The learned counsel for the petitioner also placed reliance on the order of the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.



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1266 of 2023 [Vijay Singh Vs. The State of Haryana and others] wherein by an order dated 17.05.2023, the Hon'ble Supreme Court had granted bail to that petitioner on the ground that the contraband of 1.7 kg of Poppy Straw (Doda Post) was recovered from the co-accused and that the petitioner was not present at the spot but was only named by the accused. It had been observed that there were no other materials to implicate the petitioner therein. It was also observed that though there were other cases against that petitioner, he had been granted bail. The learned counsel therefore argued that the ground that there are earlier cases against the petitioner should not be held against this petitioner since the petitioner had been granted bail in those cases. He therefore argued that bail should be granted.

9. The records in the case show that the petitioner had been arrayed as an accused in two similar cases registered by the Keerathur Police Station at Madurai in Crime No. 690 of 2019 and by Prathipadu in Andhra Pradesh in Crime No. 228 of 2022. In the case registered by Prathipadu Police Station at Andhra Pradesh, totally 180 kgs of Ganja had been seized from the accused therein. The petitioner herein was arrayed as 5th accused. It is thus seen that the petitioner had been involved in earlier cases of transportation of commercial quantity of ganja.



7. Section 37 of the NDPS Act is as follows:-

“7. Offences to be cognizable and non-bailable. –

(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 sub-section (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. ”

10. One of the primary requirements is that two conditions will



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have to be satisfied namely, that the petitioner is not guilty of the offence and that the petitioner will not commit similar offence or is not likely to commit a similar offence if granted bail. The petitioner had already committed two earlier offences though he is on bail. It is evident that he has the habit of being involved in transportation of ganja. He therefore fails in satisfying the second condition. So far as the first condition is concerned, it is no doubt true that he had been arrested on the confession of the first accused but he is the financier of the entire purchase and transportation of the ganja and therefore, he is the central person involved in the offence. Even though, the Hon'ble Supreme Court had granted bail to the second accused, who was also arrested on the confession of the first accused, one distinguishing factor is that there are two earlier cases against this petitioner and this petitioner is said to have financed the entire purchase and transportation of ganja which allegations are not levied against the second accused.

11. It is contended by the learned counsel for the petitioner that the petitioner has been in incarceration on and from he had been remanded to custody. But however it is also informed by the learned Government counsel on the side of the respondents that there are occasions before the trial Court



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where the accused had been granted bail and thereafter alternatively absent themselves , preventing effective progress of the case.

12. Taking all factors into consideration particularly the fact that the petitioner has been involved in earlier cases and had been granted bail with the hope that he would not repeat the same offence but had again committed similar offence and is also alleged to be the prime financier of the entire transaction, I would dismiss the present petition. This Criminal Original Petition stands dismissed.

20.12.2024

vsg

Index:Yes/No

Neutral Citation:Yes/No

Speaking order : Yes/No

To

1. Inspector of Police
F-3, Arambakkam Police Station
Thiruvallur District.
2. The Central Prison, Puzhal, Chennai.
3. The Public Prosecutor,
High Court of Madras.

C.V.KARTHIKEYAN, J.



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Pre Delivery Order made in
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20.12.2024