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Crl.O.P.No.26033 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM

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

Crl.O.P.No.26033 of 2023

Divakar @ Vellai Divakar

... Petitioner

Vs.

The State represented by
The Inspector of Police,
V-1, Villivakkam Police Station,
Chennai.

Crime No.170 of 2023

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
prayed to enlarge the petitioner on bail in Crime No.170 of 2023 on the file of
the respondent Police.

For Petitioner : Mr.M.Jaikumar

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)

ORDER

The petitioner who was arrested and remanded to judicial custody
on 01.09.2023 for the offences under Sections 8(c), 22(c), 29(1) of NDPS



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Act, 1985, in Crime No.170 of 2023 on the file of the respondent Police, seeks bail.

2. The case of the prosecution is that the respondent had originally arrested A1 and A2 with possession of 0.755 grams of Nitrovet tablets totally 1185 numbers. Thereafter, on the confession of A1 and A2, this petitioner was arrested and remanded to custody on 01.09.2023. However, there has been no recovery from this petitioner. This petitioner was detained under Act 14 of 1982 by an order dated 09.10.2023.

3. The learned Government Advocate (crl.side) stated that subsequently, on 22.11.2023, the Advisory Board had revoked the detention order.

4. The learned counsel for the petitioner pointed out that the petitioner had been arrested only based on the confession of A1 and A2 and there has been no recovery from the petitioner herein.

5. The Hon'ble Supreme Court in petition for Special Leave to Appeal (Crl) No.242 of 2022 [State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta and another] and petition for Special Leave to Appeal (Crl) No.1454 of 2021, had examined the status of an accused who had been arrested based on the confession of the co-accused and there had been no



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recovery of contraband from that particular accused. The observations of the

Hon'ble Supreme Court is as follows:

“9.Having gone through the records along with the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A1 and A2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking.”

6.Even in this present case, there has been no recovery of any contraband from this petitioner herein and he had been arrested only based on the confession of A1 and A2.

7.Taking that factor into consideration, I am inclined to grant bail to the petitioner subject to the following conditions:

8.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 learned



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XIII Metropolitan Magistrate, Egmore and on further conditions that:-

[a] 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.

[b]the petitioner shall report before the respondent Police, everyday 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 229A IPC.

31.01.2024

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To

- 1.The XIII Metropolitan Magistrate, Egmore, Chennai.
- 2.The Inspector of Police,
V-1, Villivakkam Police Station,
Chennai.
- 3.The Central Prison, Puzhal.
4. The Public Prosecutor, High Court of Madras.



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C.V.KARTHIKEYAN,J.

Vkr

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