



Crl.O.P.No.26834 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM

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

Crl.O.P.No.26834 of 2023

Makesh
S/o.Mani

...Petitioner/2nd Accused

Vs.

State represented by
The Inspector of Police,
S1, St. Thomas Mount Police Station,
Chennai.
(Crime No.916 of 2020)

...Respondent / Complainant

PRAYER:

Criminal Original Petition is filed under Section 439 of Cr.P.C.
praying to enlarge the petitioner on bail in C.C.No.245 of 2021 on the
file of the II Additional Special Court, for NDPS Act, Chennai.

For Petitioner : Mr. M.Jayakumar

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



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ORDER

The petitioner/A2 in C.C.No.245 of 2021 now pending trial before the learned II Additional Special Court for NDPS Act, Chennai, seeks bail.

2.Originally, the petitioner was arrested and remanded to judicial custody on 28.10.2020 for the offence punishable under Section 8(c) r/w Section 20(b)(ii)(C), Sections 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1995 in Crime No.916 of 2020.

3.There are four accused in this case and they were in possession of 321 kg 650 grams of Ganja.

4.It is the case of the prosecution that the contraband had been recovered from the possession of all the four accused.

5.The learned counsel for the petitioner placed only one aspect for consideration namely A1, A3 and A4 had been granted bail.

6.It is stated that in Crl.O.P.No.21110 of 2023 by an order dated 12.10.2023, a learned Single Judge of this Court had granted bail to one of the accused and in Crl.O.P.No.21321 of 20223 by an order dated 12.10.2023, the same learned Single Judge had granted bail to the other



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accused. It is also stated the Hon'ble Supreme Court had also granted bail to yet another accused/A4 by an order dated 31.08.2023 in SLP.(Criminal).No.3906 of 2023.

7.The reason why the Hon'ble Supreme Court had granted bail was that the trial had not progressed and that the appellant before the Hon'ble Supreme Court had undergone incarceration for a period about two years and ten months. However, the status of the case before the trial Court, wherein, the trial is ongoing in C.C.No.245 of 2021 before the II Additional Special Judge for NDPS Act, Chennai shows that the witnesses were not examined only because the counsel for the accused were not present.

8.The earlier petition seeking bail was dismissed on 19.10.2023 in Crl.O.P.No.21840 of 2023. It is a duty of the prosecution to examine the prosecution witnesses. It is stated that the chief examination of PW-1 had been taken but not yet been completed.

9.A memo had been filed by the learned counsel for the petitioner that the petitioner herein would co-operate during the entire trial process without any adjournments.



10.Taking into consideration that the Hon'ble Supreme Court had granted bail for the co-accused/A4 on 31.08.2023 observing about the period of incarceration, and also the fact that other accused had been granted bail, this Court is inclined to grant bail to the petitioner subject to the following condition.

11.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 II Additional Special Judge for NDPS Act, Chennai, 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 appear before the trial Court on every Monday, Wednesday and Friday at 10.30 a.m., till completion of trial, apart from Court hearing dates.

[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.



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[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.

09.01.2024

smv

To

- 1.The II Additional Special Judge For NDPS Act, Chennai.
2. The Cental Prison, Puzhal.
3. The The Inspector of Police,
S1, St. Thomas Mount Police Station,
Chennai.
- 4.The Public Prosecutor,
High Court of Madras.



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C.V.KARTHIKEYAN,J.

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