



Crl.O.P.No.28378 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM

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

Crl.O.P.No.28378 of 2023

1. Devaraj

2. Balaji

... Petitioners

Vs.

The State represented by,
The Inspector of Police,
T-15, SRMC Police Station.
Chennai.

(Crime No.145 of 2023).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioners/accused on bail, in C.C.No.600 of 2023,
pending on the file of the Principal Special Court for Exclusive Trial of cases
under NDPS Act, Chennai.

For Petitioners : Mr.V.C.Janarthanan
for Mr.S.Kasirajan

For Respondent : Mr.S.Santhosh
Government Advocate (Crl.Side)

ORDER



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The petitioners who were arrested and remanded to judicial custody in C.C.No.600 of 2023 pending trial on the file of the Principal Special Court for Exclusive Trial of cases under EC & NDPS Act, Chennai, in connection with Crime No.145 of 2023 registered for the offences punishable under Sections 8(c), 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985, and later amended to 8(c) r/w 20(b)(ii)(C), 18(a), 22(c), 25 & 29(1) of NDPS Act seeks bail.

2. The case of the prosecution is that on 12.02.2023, at about 09.45 hours, on receipt of a secret information about the illegal transport of Narcotic Substance, the Sub-Inspector of Police along with his team went to the place of occurrence i.e., near Osian Chlorophyll Apartment, Porur Service Road and conducted a vehicle check up. At that time, the respondent had intercepted the two wheeler "Dio" bearing registration No.TN-03-AH-0734 driven by A1 and A2 and when they try to escape, the respondent caught them and found that they were in possession of 3.050 Kilograms of Ganja. The Respondent have seized the contraband and arrested the accused. During the course of investigation, based on the confession statement recorded from the first and second accused, the respondent had arrested A3, A4 and A5 on



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14.02.2023 and from them, the contraband constituting commercial quantity have been recovered. After completion of investigation, final report has been filed and the case has also been taken up for trial in C.C.No.600 of 2023, on the file of the Principal Special Court for Exclusive Trial of cases under EC & NDPS Act, Chennai.

3. Mr.V.C.Janarthanan, learned counsel appearing for the petitioners submitted that this is the second application for bail filed by the petitioners (A3 & A5 respectively) before this Court. The allegation against the petitioners as per the prosecution is that from the petitioners herein, commercial quantity of contraband namely LSD Stamps, White Crystal Meth and Opium were stated to have been recovered. He also submitted that the co-accused in this case have been granted bail by this Court in Crl.O.P.Nos. 6821, 8865 & 25815 of 2023 vide orders dated 12.04.2023, 24.04.2023 and 07.12.2023 respectively.

4. He also submitted that the the petitioners' case stand on the same footing of the similarly placed co-accused (A4), from whom also a commercial quantity of contraband was recovered. The fourth accused has



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filed an application for bail before this Court in Crl.O.P.No.25815 of 2023 and has projected that the case against him was foisted with fabricated facts and documents. This Court, after calling for the original records from the Court below found that the corrections found in the Seizure Mahazar served to the accused does not find place in the original submitted to the trial Court and the copy forwarded to this Court for perusal. Thereby, this Court, finding that the entire case of the prosecution is bristled with infirmities and inconsistencies regarding the date, place and time of seizure, had granted bail to A4 by passing a detailed order dated 07.12.2023. Therefore, he submitted that the petitioners are also entitled for grant of bail on parity.

5. The respondent has filed a detailed counter.

6. Learned Government Advocate (Crl.Side) for the on a specific information, the respondent police intercepted A1 and A2 while they were coming in a two wheeler bearing Registration No.TN03 AH 0734 and during such time, A1 was found in possession of 2 kgs of Ganja and A2 was found in possession of 1.050 kgs of Ganja. Later based on their confession, these petitioners along with A4 were arrested on the next day, from whom,



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commercial quantity of contraband was seized. He also submitted that the fourth accused, who stands on the same footing of the petitioners herein, was granted bail by this Court in Crl.O.P.No. 25815 of 2023 vide order dated 07.12.2023. He also submitted that now the case stands posted for framing of charges on 20.02.2024. However, he object for grant of bail to the petitioners.

7. Heard the learned Counsel for the petitioners and the learned Government Advocate (Crl.Side) and perused the materials available on record.

8. It is seen that the present Criminal Original Petition has been filed by the petitioners stating that the false case has been foisted against them with fabricated facts. It is also submitted that the Seizure Mahazar and other documents are bristled with infirmities and inconsistencies in the prosecution case regarding the date, place and time of seizure. Further, the petitioners were also secured by respondent Police along with A4 on 14.02.2023 itself and they have been produced before the learned Magistrate on 15.02.2023 at 5.30 hours, only after keeping them in illegal custody for more than 36 hours. This Court, after calling for and perusing the records,



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had granted bail to the fourth accused. It is useful to extract the relevant paragraphs of the bail order of A4 in Crl.O.P.No.25815 of 2023 dated 07.12.2023.

“9. The case of the prosecution in the final report heavily rely upon the confession statements of the accused person and the seizure at seven different places witnessed by the very same persons who are none other than the Police Inspector and Constables. Without any public witnesses, the multiple seizure mahazars been conducted in the presence of the same witnesses. The overwriting, correction and interpolations including the date seal of the learned Judicial Magistrate indicating that the seizure mahazar was presented before the Court on 10.02.2023, place the prosecution case highly doubtful. The car bearing No. TN 12 AK 7965 in which, the alleged contraband recovered from this petitioner was seized by the respondent police over the seizure mahazar indicates that the car was seized from one Devaraj and not from this petitioner.

10. The examination of the documents does not indicate that contraband alleged to have been seized from the petitioner was really in possession of the petitioner, either physically or constructively. Hence, this Court inclined to grant bail to the petitioner and ordered to be released on bail subject to the following conditions;”



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10. Taking into consideration the above facts and circumstances of the case, taking note of the fact that the similarly placed co-accused (A4) has been granted bail by this Court and the petitioners also stand on the same footing, this Court is inclined to grant bail to the petitioners on the ground of parity imposing conditions.

11. Accordingly, the petitioners are ordered to be released on bail on their executing separate bond for a sum of **Rs.50,000/- (Rupees Fifty thousand only)** with **two sureties**, each for a like sum to the satisfaction of the **Principal Special Court for Exclusive Trial of cases under EC & 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 petitioners shall appear before the trial Court everyday at 10.30 a.m., for a period of one week and thereafter, on the dates fixed by the learned trial Judge;



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[c] the petitioners shall not abscond during trial;

[d] the petitioners shall not tamper with evidence or witness during trial;

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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 abscond, a fresh FIR can be registered under Section 229A IPC.

09.02.2024

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To

1. The Principal Special Court for Exclusive Trial
of cases under EC & NDPS Act,
Chennai,
2. The Inspector of Police,
T-15, SRMC Police Station,
Chennai.
3. The Central Prison,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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