



Crl.O.P.No. 29025 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.02.2024

PRONOUNCED ON : 28.02.2024

CORAM

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

Crl.O.P.No. 29025 of 2023

B.Karthick Raja

... Petitioner/A-2

Vs.

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

... Respondent

PRAYER: Criminal Original Petitions filed under Section 439 of Cr.P.C.,
pleased 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.Martin Manivannan

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



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ORDER

The second accused in C.C.No. 187 of 2023 pending before the Principal Special Court for trial of Cases under NDPS Act at Chennai, seeks bail.

2. Originally, Cr.No. 114 of 2022 had been registered under Sections 8(c), 20(b)(ii)(C), 25 & 29(1) of NDPS Act 1985 on 28.05.2022. This petitioner was named in the FIR as an absconding accused.

3. The first accused was remanded to custody on 28.05.2022. This petitioner was arrested on 02.10.2022 and remanded on the same date.

4. It is the case of the prosecution that the respondent intercepted a mini lorry bearing Registration No. MH 05-AM-1243 and questioned the driver /A-1. When the lorry was searched, they found 235 kgs of Ganja. The first accused was arrested. Subsequently, the FIR was registered. Thereafter, the first accused had given a confession and he had stated that this petitioner, A-2 and A-3 Ganesh @ Ganesh Babu, who is absconding, had purchased the



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contraband from Andhra Pradesh for selling it in Tamilnadu for personal gain. The respondent completed the procedure of arrest of the first accused and produced the seized materials before the jurisdictional Court. Thereafter, this petitioner was arrested on 2.10.2022. The third accused was arrested on 22.12.2022 in Andhra Pradesh.

5. The learned counsel for the petitioner stated that this petitioner is not connected with the third accused. There is also no connection between the petitioner and the first accused. He also pointed out that the confession of the first accused cannot be termed to be admissible in view of the Judgment of the Hon'ble Supreme Court reported in **(2013) 16 SCC 31 [Tofan Singh Vs. State of Tamilnadu]**. It had also been contended that the investigation had been completed and the final report had been filed. In view of these facts, it is stated that the bail should be granted.

6. The learned counsel for the petitioner also pointed out that learned Single Judges of this Court granted bail to the accused, who had been arrested on the basis of confession of the co-accused and when there has been no recovery made. In this connection, the learned counsel placed reliance on the following orders:-



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(1) Crl.O.P.(MD).No. 17530 of 2022 [Maran Vs. the State through the Inspector of Police], dated 01.12.2022;

(2) Crl.O.P.No. 28600 of 2022 [E.Nelson Rojas @ Nelson Rogers Vs. The State rep. by the Inspector of Police] dated 29.11.2022;

(3) Crl.O.P.No. 12527 of 2023 [Aashik Ali @ Aashik Vs. State Rep. by the Inspector of Police] dated 26.06.2023; and

(4) Crl.O.P.No. 19018 of 2022 [S.Sowbar @ Sowbar Sadhik Vs. State Rep. by Inspector of Police] dated 30.08.2022.

7. The learned counsel also placed reliance on the Judgment of the Hon'ble Supreme Court in ***Crl.A.No. 949 of 2018 [Surinder Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence]*** wherein the similar circumstances the Hon'ble Supreme Court had held as follows:-

“14. In the present case it is accepted that apart from the aforesaid statements of co-accused



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there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges leveled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence. ”

8. The learned counsel also placed reliance on the Hon'ble Supreme Court in ***Petition(s) for Special Leave to Appeal (Crl.) No(s). 12305 of 2023 [Sreenath M Vs. Union of India] dated 01.11.2023*** wherein the Hon'ble Supreme Court had held as follows:-



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“5. The question whether the petitioner was associated with other accused and was a member of the group and/or was involved in conspiracy along with other accused to transport the contraband from Andhra Pradesh to Tamil Nadu, is subject matter of trial. It is not expedient for this Court to express any opinion in this regard at this stage. The stand taken by the prosecution before the High Court that the commercial quantity was recovered from the petitioner appears to be incorrect, as there is no such averment in the information report or the subsequent statements recorded under Section 67 of the Act. That being so, it will be debatable whether rigors of Section 37 of the NDPS Act are attracted or not.

6. Having regard to the period already spent by the petitioner in custody and the fact that the conclusion of trial will take some reasonable time, but without expressing any opinion on merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail



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bonds to the satisfaction of the Trial Court. It is directed that the petitioner shall remain present before the Trial Court on each and every date of hearing, failing which it shall be taken as a misuse of the concession of bail. Similarly, if the petitioner is found involved in any other case under the NDPS Act, that will also amount to misuse of the concession of bail.”

9. The learned counsel also placed reliance on the Judgment of the Hon'ble Supreme Court in ***SLP (Crl.) Nos. 11644-11645 of 2023 dated 08.12.2023 [Benoy Babu Vs. Directorate of Enforcement]***, wherein the Hon'ble Supreme Court had observed as follows:-

“The appellant-Benoy Babu has already suffered incarceration for about thirteen months and the trial has not commenced, in the sense, that charges have not yet been framed.

Having regard to the aforesaid facts and circumstances, including the period of incarceration already suffered by the appellant – Benoy Babu, we



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accept the present appeals and direct that the appellant – Benoy Babu will be released on bail in complaint case No. 31 of 2022, pending before the learned ASJ/Special Judge (PC Act) (CBI-09), Rouse Avenue District Courts, New Delhi in ECIR/HIU-II/14/2022.”

10. The learned counsel also placed reliance on an order of this very Court ***dated 24.01.2024 in Crl.O.P.No. 287 of 2024 [Muthu @ Desamuthu Vs. State rep. by the Inspector of Police]***, wherein this Court had also granted bail for the petitioner therein.

11. The learned Government Advocate (Crl. Side), however strongly opposed to grant of bail. He pointed out that the possession of quantity of contraband seized was 235 kgs of Ganja and from the statement of the first accused, it is clear that this petitioner was directly involved in the purchase of Ganja and in sale of Ganja. He also stated that this petitioner had financed the entire operation. The learned Government Advocate (Crl. Side) stated that the issue whether the petitioner was directly involved or not is a matter of trial. The learned counsel placed reliance on the order of the Hon'ble Supreme Court in ***Criminal Appeal No. 3771 of 2023 [Rahmeen***



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Rafiq Charania Vs. The Union of India, wherein the Hon'ble Supreme Court had stated as follows:-

“Essentially, it is for the Trial Court to consider the admissibility and evidentiary value of each and every evidence, as observed earlier. But, at the same time, the circumstances emanating from the materials, as mentioned, dissuade us from holding that there are reasonable grounds for believing that the appellant is not quality of such offence(s) at this stage and also that it is unlikely that he would commit any offence while on bail. The upshot of the discussion is that this appeal has to fail.”

That was also a case where commercial quantity of contraband had been seized.

12. The learned Government Advocate (Crl. Side) also placed reliance on the order of the Hon'ble Supreme Court in ***SLP (Crl.) No(s). 8137 of 2022 [State by the Inspector of Police Vs. B.Ramu] dated***



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12.02.2024 wherein the Hon'ble Supreme Court had held as follows:-

“9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

10. It is apposite to note that the High Court not only omitted to record any such satisfaction, but has rather completely ignored the factum of recovery of narcotic substance (ganja), multiple times the commercial quantity. The High Court also failed to consider the fact that the accused has criminal antecedents and was already arraigned in two previous cases under the NDPS Act.

11. In case of recovery of such a



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huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

12. For entertaining a prayer for bail in case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act.

14.”

13. I have carefully considered the rival contentions.

14. This is a case where there has been seizure of commercial quantity of Ganja of 235 kgs from a vehicle driven by the first accused. Even in the FIR itself, the first accused had disclosed that it was this petitioner/A-2 and A-3, who were involved in the smuggling and subsequent



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sale of Ganja. Therefore, the respondent had not picked up the name of this petitioner out of thin air. They had information of this petitioner at the time of initial arrest of the first accused itself. This petitioner had escaped the dragnet of law and absconded. He had been subsequently arrested. Thereafter, the third accused had also been arrested at Andhra Pradesh. After that the respondents had filed their charge sheet. This is a case where the first accused had specifically mentioned about the role of this petitioner. The confession of the first accused is inadmissible but the role of this petitioner in financing the purchase of Ganja with an intention to sell it can be independently proved by the respondent by producing necessary evidence during the course of trial.

15. I had the benefit of examining the case diary and the materials available for the prosecution.

16. The prosecution also have based their case on the financial transactions also. Those are issues to be examined during the course of trial. But the prosecution must be given an opportunity to prove the involvement of this accused directly in the purchase of the Ganja. As stated by the Hon'ble



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Supreme Court in **B.Ramu [SLP (Crl.) No. 8137 of 2022]** cited above, in paragraph No. 14:-

“14. The fact that after investigation, the charge-sheet has been filed against the respondent-accused along with other accused persons, fortifies the plea of the State Counsel that the Court could not have recorded a satisfaction that the accused was prima facie not guilty of the offences alleged.”

17. Even in this case, the final report had been filed and the list of documents and the list of witnesses have been filed. It is for the petitioner to face trial.

18. In view of these reasons, the contention that merely because this petitioner was arrested on the basis of confession of the first accused and since there had been no recovery from this petitioner it would mean that the petitioner has reasonable grounds to be acquitted cannot be accepted. All the issues will have to be examined during the course of trial. I am not inclined to grant bail to the petitioner. Accordingly, this Petition stands dismissed.



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vsg

C.V.KARTHIKEYAN, J.

vsg

To

1.Principal Special Court, Special Court under EC & NDPS Act, Chennai.

2. The Inspector of Police
F-3, Arambakkam Police Station
Thiruvallur District.

3. The Central Prison, Puzhal.

4. The Public Prosecutor,
High Court of Madras.

Pre Delivery Order made in
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