



CRL OP(MD). No.14589 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 09/09/2024

PRESENT

The Hon`ble Mr.Justice D.BHARATHA CHAKRAVARTHY

CRL OP(MD). No.14589 of 2024

1. Ajmal L.S,

2. Akbar Ali,

... Petitioners/ Accused Nos.3 & 4

Vs

**The Sub Inspector of Police,
Sivagiri Police Station,
Tenkasi.**

Cr. No.355/2023..

... Respondent/ Complainant

For Petitioner : M/s.Balamurali.K.P, Advocate.

**For Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor**

PETITION FOR BAIL UNDER SECTION 483 OF BNSS

PRAYER :-

For Bail in Crime No.355/2023 on the file of the respondent Police.

ORDER : The Court made the following order :-



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The petitioners/ Accused, who were arrested and remanded to judicial custody on 12.10.2023 for the offences punishable under Sections 8(C), 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 in crime No.355 of 2023 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioners herein and other accused were found in possession of 105 Kgs of Ganja. Hence, the complaint.

3. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondent Police.

4. In this case A1 and A2 were found to be in possession of 105 Kgms of Ganja. Only from the confession that the petitioners alone procured Ganja to A1 and A2, these petitioners were arrested on 12/10/2023. According to the petitioners, since the statutory period of 180 days expired on 09.04.2024, they moved an application in Crl.M.P.No.1453 of 2024 for enlarging them on statutory bail. When the application came up for hearing, the learned Principal Special Court for Essential Commodities and NDPS Act cases, Madurai, by an order dated 10/6/2024 found that the final report has already been filed on 6/4/2024 by e-filing at 17.30 hours. Since the charge sheet has been filed within the time, the said application is dismissed. Aggrieved by which the petitioners are before this Court.

5. The learned counsel for the petitioners, by relying upon the judgment of the

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Hon'ble Supreme Court of India in Achpal Alias Ramaswaroop and another Vs. State of Rajasthan in 2019(14) SCC page 599 would submit that even as on today there is nothing before the learned Magistrate in the form of a final report, even though the final report is said to have been filed on 6/4/2024, there is absolutely nothing which is there on the file of the Court. Therefore, as per the dictum of the Honourable Supreme Court of India, while considering the right of the accused to be released on statutory bail, merely because some paper has been presented and taken return cannot come in the way of the petitioners being enlarged on statutory bail.

6. I have considered the said submission since in the order of the trial court, three different dates were mentioned as the date of filing of the charge sheet in three different places the respondent was specifically directed to file counter affidavit. Since the counter affidavit did not contain the exact details as to what happened, this Court further adjourned the matter for the Investigation Officer to file a status report as to what happened in the matter. Today, a status report is filed. It has been stated that the investigating officer got the approval of the Public Prosecutor on 3/4/2024 and the final report was ever filed on 6/4/2024. On 8/4/2024, the final report was returned on the ground that certain documents were not annexed, along with the final report. Thereafter, the Investigating Officer had also found that as per the corrected documents, mobile phones from A1 to A3 have been recovered and the said



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recovered cell phones are still in the custody of the Inspector of Police, Sivagiri, without being deposited into Court, the property is also not numbered as a property in the Court. Further, with reference to the investigation done by the Inspector of Police, Sivagiri, the documents relating to compliance of Section 57 of the NDPS Act had to be further properly collected and the communication is already addressed to him and he has not complied with said request. Further, on 6/9/2024 a copy application is also made, for furnishing the RFPL and requisition letter. Further, tip off has been received with reference to A5 to A7 viz., Akil Santhosh, Soloman and Jagubai respectively that they are in a hideout in the state of Orissa. Therefore, Investigating Officer is continuing the investigation with reference to all the aspects. In view thereof, it cannot be said that investigation is completed and the final report has been filed prior to the statutory period of time. Therefore, the petitioners are entitled to be enlarged on statutory bail.

7. In this case, it can be seen that the petitioners are involved in a serious case. The haul was huge of 105 Kgms. The first petitioner Ajmal has got 13 previous cases. In spite of all these, it can be seen that when the investigation is transferred to the NIB, the relevant documents are not properly handed over. The mobile phones are not even deposited into court. Only considering these lapses, upon directions of this

Court, a circular dated 3/2/2024 was also issued, whereby, the Superintendent of

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Police, Narcotics Intelligence Bureau has appointed as state level Nodal officer to monitor the progress of investigation of NDPS cases. The said Nodal officer is in a better position to interact with the Additional Director General of Police (Crime) and the other officers. They could have ensured that these investigations which is done by the Inspector of Police, Sivagiri Police station and all the documents and materials are duly handed over to the subsequent investigating officer / to the court. Only on account of non coordination and lack of swift progress in the case, the petitioners are enlarged on statutory bail. Therefore, a copy of this order to be marked both the Additional Director General of Police, Law and Order, Chennai and concerned Superintendant of police, Natcotic Intelligence Bureau, Thenkasi for further action and enquiry as to what happened in this matter and to monitor the further progress of the case.

8. Accordingly, this Criminal Original Petition is allowed and the petitioners are ordered to be released on bail, on executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties (one should be blood or close relative) each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for EC and NDPS Act Cases, Madurai, Tamil Nadu.

(i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar



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card or Bank Pass Book to ensure their identity;

(ii)the petitioners shall appear before the respondent Police daily at 10.30 am for a period of four weeks and thereafter, as and when required for interrogation;

(iii)the petitioners shall not tamper with evidence or witness;

iv)the petitioners shall not abscond during trial.

v)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].

vi)If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
09/09/2024

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09 / 09 /2024

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

TRP



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TO

1 THE SESSIONS JUDGE
SPECIAL COURT FOR EC AND NDPS ACT CASES,
MADURAI,
TAMILNADU.

2 THE SUPERINTENDENT,
CENTRAL JAIL,
PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.

3 THE SUB INSPECTOR OF POLICE
SIVAGIRI POLICE STATION,
TENKASI.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO

1. THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
LAW AND ORDER, CHENNAI.

2. THE SUPERINTENDANT OF POLICE,
NATCOTIC INTELLIGENCE BUREAU,
THENKASI.

+2 CC to M/s.ASHAIQ ISMAIL, Advocate (SR-11051[I] dated 09/09/2024)

ORDER
IN
CRL OP(MD) No.14589 of 2024
Date :09/09/2024



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