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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 21.10.2024

PRESENT

The Hon`ble Mr.Justice D.BHARATHA CHAKRAVARTHY

CRL OP(MD)No.15148 of 2024

Dhanaraj

... Petitioner/Sole Accused

Vs

The State of Tamil Nadu,
Rep.by.The Inspector of Police,
Kodaikanal Police Station,
Dindigul District.
Crime No.268 of 2024

... Respondent/Complainant

For Petitioner : Mr.G.Karuppasamy
for Mr.P.Senguttuarasan

For Respondent : Mr.R.M.Anbunithi
Additional Public PROsecutor

PETITION FOR BAIL Under Sec.483 of BNSS

PRAYER :- For bail in Crime No.268 of 2024 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/Accused, who was arrested and remanded to judicial custody on 27.07.2024 for the offences punishable under Sections 8(c), 22(C), 20(b)(ii)(A) of

NDPS Act, in crime No.268 of 2024, on the file of the respondent police, seeks bail.

<https://www.mhc.tn.gov.in/judis>



2. The learned Counsel for the petitioner would submit that in this case even though the scientific report is now received and it contains the chemical namely, Psilocybin, it should be seen that the further ingredients with reference to the chemicals mentioned therein, is not mentioned in the report. He would further submit that the magic mushroom is a natural produce. In the said natural produce, how much quantity of the concerned psychotropic drug is present, is not mentioned in the report. If only the quantity of the drug exceeds 550 grams, it would become a commercial quantity and not the total weight of the mushroom itself should be considered. The learned Counsel for the petitioner would also rely upon the judgment of the learned Single Judge of the Karnataka High Court, dated 03.05.2013 made in Criminal Petition No.17 of 2013, morefully relying upon paragraph No.6 and the same is extracted hereunder:

"The contention of the learned Government Pleader that the Magic Mushroom is a mixture as notified under the notification dated 18.11.2009 and the scientific report specifies the presence of narcotic drug and therefore the provisions of NDPS Act are applicable is unacceptable to me. It is not in dispute that the Magic Mushroom is a natural produce and as such the same do not fall under the definition of mixture. The quantity of the substance is to be taken into consideration to find out whether the seized drug falls within the category of small



quantity or commercial quantity. In the instant case the scientific report do not specify the percentage of presence of Psilocin and Psilocybin. In the absence of any such material on record it is no possible to accept the contention of the learned Government Pleader that the seized Magic Mushroom is a mixture."

3. Per contra, the learned Additional Public Prosecutor would submit that only to overcome such arguments, the NDPS Act itself was amended by Narcotic Drugs and Psychotropic Substances (Amendment Act 2014) (Central Act No.16 of 2014) and the said amendment seeks to clarify the legislative intent to take the entire quantity of drugs seized and determining the quantum of punishment and not the pure drug content and would oppose the prayer of the petitioner.

4. Heard the Counsel on either side and perused the material records of the case.

5. On the contention of the learned Counsel for the petitioner, this Court had directed the concerned expert to appear before this Court virtually. The expert submitted that it is not possible to weigh the quantity of the concerned chemical which is present in the mushroom. According to her, if the mushroom contains the particular chemical, then that will have an hallucinating effect and therefore that would be a psychotropic substances and illegal possession are used thereof would be an offences under the Act.



6. As a matter of fact, *prima facie* from the informal interaction with the expert at the stage of grant of bail, it can be seen that the particular type of mushroom, namely, the magical mushroom, every cell contains the said chemical. If the produce is a natural produce and every cell of the same contains a chemical, then *prima facie* I am of the opinion that the entire material has only to be weighed and considered for the purpose of determining whether it is commercial quantity or not. *Prima facie*, I am not in agreement with the conclusions made by the Karnataka High Court cited *supra*. The penal statutes has to be considered strictly as such and interpretation need not be made and further explanation need not be added to the penal provisions so as to aid the accused.

7. For the above reasoning, *prima facie* for the decision in the bail application, I am not in agreement with the view taken by the learned Single Judge of the Karnataka High Court cited *supra*. For all the above reasons, since the quantity is commercial in nature, I am of the view that this is not a fit case for enlarging the petitioner on bail.

8. Accordingly, this Criminal Original Petition stands dismissed.

sd/-

21/10/2024

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

1. The Superintendent,
Central Prison,
Madurai.
2. The Inspector of Police,
Kodaikanal Police Station,
Dindigul District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER
IN
CRL OP(MD) No.15148 of 2024
Date :21/10/2024

KVL/23.11.2024 5P/4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023