



Crl.O.P.No.16486 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COUR
(Criminal Jurisdiction)

ORDERS RESERVED ON : 29.10.2024

ORDERS PRONOUNCED ON: 07.11.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.O.P. (MD) Nos.16486 and 18297 of 2024

Krishnakantbellv

... Petitioner / Accused No.9
in Crl.O.P.No.16486 of 2024

Samraj @ Shyamraj

... Petitioner / Accused No.17
in Crl.O.P.No.18297 of 2024

Vs.

State rep.by
The Inspector of Police
Andipatti Police Station
Theni District.
(Crime No.19 of 2023.)
the Crl.O.P's.

... Respondent / Complainant in both

PETITIONS FOR BAIL Under Sec.483 of BNSS

COMMON PRAYER :-

For Bail in Crime No.19 of 2023 on the file of the Respondent Police.



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In Crl.O.P.No.16486 of 2024:

For the Petitioner : Mr.Muthuchharan Sundresh, Advocate
for Mr.Sri Ganesh .N, Advocate

For the Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor (Crl.Side)

In Crl.O.P.No.18297 of 2024:

For the Petitioner : Mr.Jeya Aron Raja .J, Advocate

For the Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor (Crl.Side)

COMMON ORDER : The Court made the following order :-

The petitioner in Crl.O.P. (MD) No.16486 of 2024 was arrested and remanded to judicial custody on 16.01.2023 for the offences under Sections 8(c) read with 20 (b) (ii) (C), 29 (1) and 25 of the NDPS Act, 1985.

2. The petitioner in Crl.O.P. (MD) No.18297 of 2024 was arrested and remanded to judicial custody on 19.10.2023 for the offences under Sections 8(c) read with 20 (b) (ii) (C) of the NDPS Act, 1985.

3. The petitioner in Crl.O.P.(MD) No.16486 of 2024 - Krishnakantbellv is arrayed as Accused No.9 and the petitioner in Crl.O.P.(MD) No.18297 of 2024, Samraj @ Shyamraj were arrayed as Accused No. 17 in Crime No.19 of 2023, on the



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file of the respondent police.

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4. The case of the prosecution is that the respondent - Police received a tip-off that ganja is being transported in an Ashok Leyland lorry with a name Duwaraka, with the contraband concealed between the boxes containing dried fish and the same will pass through Theni in the early morning. The said information was entered in general diary and after informing the superior officials, the respondent - Police reached the check post at Thimmarasanayakanur Watertank in Andipatti to Madurai main road at about 6 am. The lorry as described in the tip-off came to the spot and the Police introduced themselves to the Accused 1 to 3 (Abubakar Sedhiq, Selvaraj and Chinna Samy) who were all traveling in that vehicle. After getting consent that the lorry to be searched by the presence of a Gazetted Officer, after preparing the consent letter and sending that letter to Tasildar of Andipatti and Thimmarasanayakanur and the said authorities being present at that time at 8 am upon being checked, the lorry contained 29 white colour plastic bags along with the dried fish contained in palm leaf container boxes. Upon further inspection, a total of 1200 kgs of ganja was recovered. As per the confession given by the accused 1 to 3, who conspired with one Pandi @ Jeyachandran and as per the conspiracy, they went to Andra Pradesh in a lorry bearing Registration No.TN 65 AW 5956, where they contacted one Ram babu belonging to Paderu, Andra Pradesh, and one Chellapandi



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of Chintapalle and went to the nearby Devavaram Village, where one Keshava Rao was standing in a small road near the forest area and another person by name Prasad, who also belongs to the same area, took out these 1200 kgs of ganja, which was hidden in the haystack and loaded the same and thereafter the accused 1 to 3 went to Kakinada and also purchased the dried fish to sell the contraband they had arranged the same above the contraband and were transporting the same. Upon which the police intercepted and caught them with the contraband.

5. Thereafter, investigation was proceeded and charge sheet was filed as against 18 persons and the case is now pending in C.C.No.989 of 2023. Some of the accused persons filed bail applications before this court. Earlier, when it was pointed out by this Court that in respect the 3rd accused there was materials available, the said bail petition was withdrawn. As far as the present two petitioners are concerned, Krishnakantbellv was arrayed as A9 and Samraj @ Shyamraj was arrayed as A17.

6. The learned counsel appearing on behalf of the petitioners would submit that no contraband was recovered from these petitioners. The allegation against Samraj @ Shyamraj is that he along with the 18th accused -Shanmuga Prabhu only contacted Krishnakantbellv and requested him to arrange for the contraband. The allegation against the Krishnakantbellv is that he is the one who arranges ganja by



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planting and harvesting the ganja plants. In this case, the other accused went to Srikakulam, Padamapur, Mohana and other districts, procured the ganja from other hilly terrains and handed over the same to the said Krishnakantbellv, who collected the contraband and hid the same in haystack and thereafter caused the supply.

7. The contention of both the learned counsel for the petitioners is that when the charge sheet is already filed, there is absolutely no iota of evidence whatsoever which has been collected by the prosecution. The petitioner – Krishnakantbellv is in custody since 16.01.2023, for more than 1 year and 10 months and the petitioner - Samraj @ Shyamraj was is in custody from 19.10.2023 for almost a period of 1 year. In view of the Non Bailable Warrant pending against some of the accused, the case has not proceeded with.

8. Therefore, the learned counsel firstly submitted that when there is no material available in this case to press home the charges against the petitioners, they cannot be denied bail on the strength of the Section 37 of the NDPS Act. Secondly, huge period of incarceration should be considered and when the fundamental right under Article 21 of the Constitution of India, for speedy trial stands violated and when there is no scope for the trial could be completed in the near future, the petitioners should be enlarged on bail.

9. These bail applications originally came up on 30.09.2024. Considering the



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seriousness of the issue, when huge quantity of 1200 kgs of ganja is seized, this court directed the respondent- Police to point out from the final report or even produce any material subsequently available as against the petitioners and adjourned the matter on 14.10.2024. Further time was also granted from 14.10.2024 to 17.10.2024 and 17.10.2024 to 21.10.2024. The counter affidavits filed on behalf of the respondent did not point out any materials as against the petitioners. Under these circumstances, in one paragraph of the counter affidavit, it was mentioned that CDR particulars were available. The said CDR particulars were not enclosed along with the final report. Even the particulars of one earlier case which is said to be pending against the petitioner - Krishnakantbellv was also not mentioned. Initially the Investigating Officer was also not present before this Court. Therefore, this Court passed the following detailed order on 21.10.2024:

“This case relates to the petitioner was found in possession 1200 Kgs of Ganja.

2. The learned counsel for the petitioner argues that there is absolutely no material against the petitioner. This Court also went through the final report except it is the



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contention of learned counsel for the petitioner that except for the confession of the Co accused to state that they procured the ganja from this petitioner, there is no other material. Even though in paragraph No.4 of the counter affidavit, it is mentioned that there are CDR particulars available, no such CDR particulars is enclosed along with the final report. This court also gave an opportunity that even if it is available today and if they are willing to file supplementary report, they can do so and adjourned the matter. But even today neither any CDR particulars is placed before this Court then nor it seems to be in the file of the respondent. This apart, the bail is also opposed on the ground that there is one more previous case is against the same accused in Andhra Pradesh of 1500 kgms of ganja. Particulars of the said case is also not given. Therefore, one final opportunity is granted to the prosecution.

3. The matter stands adjourned to 23.10.2024. The copy of this order shall also be placed before the higher official by



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the Investigating Officer and the counter affidavit, if any, shall be placed on record before this court on that day. Additional counter affidavit, if any, shall be placed on record, failing which the matter will be considered on its own merits”

10. Thereafter, another affidavit was filed, stating that no CDR particulars were available, but it was incorrectly mentioned in the earlier counter affidavit. It is further submitted that 4th accused is still absconding and only when the 4th accused is arrested, some materials can be gathered against the petitioners. It can be seen that, now only, the respondent – Police are making claim that they will produce further materials. Already statutory period of 180 days is over. Be that as it may, considering the seriousness of the case, that 1200 kgs ganja is involved, this Court granted further time even to subsequently gather materials and adjourned the bail petition to 21.10.2024. Even on the said date, no materials were forthcoming.

11. The learned Additional Public Prosecutor submitted that if some more time is granted, materials would be gathered as against the petitioners.

12. This Court pointed out that when the accused has given the confession that this petitioner only stashed the contraband in a particular place in a haystack, it is strange that during the process of investigation, the Investigating Officer or the



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other Police did not even visit the said place and prepare an Observation Mahazar, which could have been at least a shred of material as against the petitioner. However, that is not to be.

13. Even on 29.10.2024, this Court while reserving orders, gave liberty to the respondent – Police to place materials which they may be subsequently collecting, to place before this Court on or before 06.11.2024 and observed that the orders will be pronounced only after 06.11.2024. Even then till date, absolutely, no material is placed before this Court. Therefore, as undertaken and directed by the higher officials of the respondent – Police, it would be open for them to proceed further and collect materials and file such supplementary final report before the Trial Court. Further, considering the fact that as on date, there is no other material available as against these petitioners, except the confession of the co-accused, this Court has no other option than to enlarge the petitioners on bail. The fact that one of the petitioners is in custody from January 2023 and the other accused is from October 2023 is also taken into account. It can be seen that, in view of the NBW issued as against some of the accused, trial has also not commenced. Under these circumstances, I am inclined to enlarge the petitioners on bail, subject to the following conditions:-

[a] Accordingly, the petitioners are ordered to be released on bail on condition



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to execute a bond each for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Principal Special Judge for Trial of NDPS Act Cases, Madurai, and on further conditions that:

[b] 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.

[c] the petitioners shall report before the respondent - Police daily at 10.30 a.m., for a period twelve weeks and thereafter, as and when required for interrogation.

[d] the petitioners shall not commit any offences of similar nature.

[e] the petitioners shall not abscond either during investigation or trial.

[f] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[g] On breach of any of the aforesaid conditions, the learned Judicial 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].



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[h] If the accused thereafter absconds, a fresh FIR can be registered under

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Section 229A IPC.

sd/-
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18/11/2024

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

JER

To

1.The Principal Special Judge for Trial of NDPS Act Cases,
Madurai.

2.The Inspector of Police,
Andipatti Police Station,
Theni District.

3.The Superintendent,
Central Prison,
Madurai.

4.The Superintendent,
Central Prison,
Palayamkottai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.J.JEYA ARON RAJA, Advocate (SR-13699[I] dated 07/11/2024)



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ORDER

IN

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Date :07/11/2024

ED/ /SAR- (18/11/2024) 12P / 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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