

CRL OP(MD)No.21672 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRL OP(MD)No.21672 of 2024

Raja Pandi

... Petitioner

Vs

The State of Tamil Nadu represented by
The Inspector of Police,
NIB CID Police Station,
Dindigul District.
[Cr No.15 of 2023]

... Respondent / Complainant

For Petitioner

: Mr.Karuppasamyandiyan

For Respondent

: Mr.P.Kottaisamy,

Government Advocate (Crl Side)

ORDER

The petitioner who was arrested and remanded to judicial custody on 25.11.2023 for the offences punishable under Sections 8(c), 20(b)(ii)(C), 25 and 29(1) of NDPS Act in Crime No.15 of 2023 on the file of the respondent Police seeks bail.

2.The case of the prosecution is that the petitioner and other accused were found in possession of 21.600 Kgs of ganja. Hence the complaint.

3.The learned Counsel appearing for the petitioner submits that totally there are nine accused and the petitioner is A4. The petitioner is a physically challenged person. He has only two fingers in his hands and hence he was not able to drive the



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car. This is the fourth application filed by the petitioner seeking bail. The learned Counsel by referring to the recent judgment of the Hon'ble Supreme Court in V.Senthil Balaji Vs Deputy Director, Directorate of Enforcement reported in 2024 (3) MWN (Cr) 169 (SC) submits that when there is no likelihood of the trial being concluded within a reasonable time, the accused is entitled for bail and the Hon'ble Supreme Court has held that a person cannot be detained in prison forever by referring the provisions under Section 37 of the NDPS Act. The relevant portion of the order referred by the petitioners's Counsel is extracted hereunder:

“23. In the case of Manish Sisodia v. Directorate of Enforcement¹ in paragraphs 49 to 57, this Court held thus:

“49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.



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51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra⁶ wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh , Shri Gurbaksh Singh Sibbia v. State of Punjab , Hussainara Khatoon (I) v. Home Secretary, State of Bihar⁹, Union of India v. K.A. Najeeb¹⁰ and Satender Kumar Antil v. Central Bureau of Investigation¹¹. The Court observed thus:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:



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“10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

“What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

“I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.””

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach.



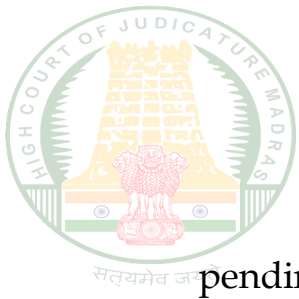
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On account of nongrant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that “bail is rule and jail is exception”.

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents.

It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.

55. As observed by this Court in the case of Gudikanti Narasimhulu (supra), the objective to keep a person in judicial custody



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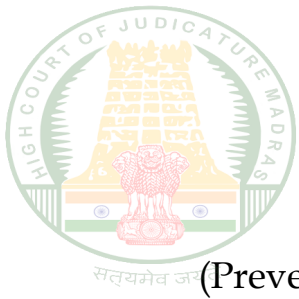
pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

56. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.

....." (emphasis added)

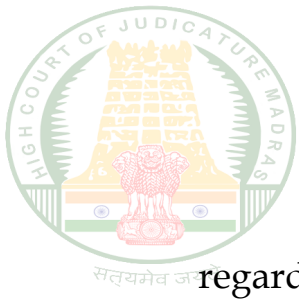
24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Code of Criminal Procedure, 1973. A higher threshold is provided in these statutes for the grant of bail. By way of illustration, we may refer to Section 45(1)(ii) of PMLA, proviso to Section 43D(5) of the Unlawful Activities



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(Prevention) Act, 1967 and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). The provisions regarding bail in some of such statutes start with a non obstante clause for overriding the provisions of Sections 437 to 439 of the CrPC. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.

25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a wellsettled principle of our criminal jurisprudence that “bail is the rule, and jail is the exception.” These stringent provisions



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regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.

26. There are a series of decisions of this Court starting from the decision in the case of K.A. Najeeb², which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an undertrial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.”

4.The learned Government Advocate (Crl Side) appearing for the respondent submits that the contraband recovered from the petitioner is a commercial quantity. In order to transport the ganja to Sri Lanka the accused had travelled in a car and the



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total contraband involved in this case is 100 Kgs and the respondent police has recovered a sum of Rs.5,48,500/- from the accused persons. He further submits that the offending vehicle was parked in front of the petitioner's house and the owner of the car is the petitioner's mother in law.

5.The learned Government Advocate (Crl Side) further submits that after investigation final report has been filed and the trial in this case has already commenced. PW4 has been examined on 11.12.2024 and the case is posted for examination of PWs.1,2,3 and 5 on 18.12.2024. He has raised objections that since trial has already been commenced, the trial itself would be completed within a period of one month. He further submits that the petitioner was arrested along with 21.600 Kgs of ganja and according to him the petitioner is the main accused, who procured the contraband from A1 to A3 and has also transported the same to the Sri Lanka. Considering the nature of allegations and the provisions under Section 37 of the NDPS Act, this Court has dismissed the earlier bail applications of the petitioner.

6.This Court has considered the submissions made on either side and perused the materials.

7.The respondent police claim that the contraband recovered from the petitioner is a commercial quantity, the total contraband involved in this case is 100 Kgs and a sum of Rs.5,48,500/- was recovered from the accused persons. Further the



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offending vehicle was parked in front of the petitioner's house and the owner of the car is the petitioner's mother in law. It was intended to be transported to Sri Lanka. It is reported that the trial in this case has already commenced. PW4 has been examined on 11.12.2024 and the case is posted for examination of PWs.1,2,3 and 5 on 18.12.2024.

8.The learned Government Advocate has raised objections for grant of bail that the trial itself would be completed within a period of one month. Considering the nature of allegations and the provisions under Section 37 of the NDPS Act, this Court has dismissed the earlier bail applications of the petitioner. Now the petitioner has claimed that the trial is not completed and therefore, the petitioner be enlarged on bail. He has also relied on judgment of the Hon'ble Supreme Court in V.Senthil Balaji Vs Deputy Director, Directorate of Enforcement reported in 2024 (3) MWN (Cr) 169 (SC) . The Hon'ble Supreme Court in the said judgment has insisted that if a person has been denied bail, then there must be a speedy trial and the accused is entitled for bail, if the trial has not commenced for a long time and there is no likelihood of completing the trial in near future. Wherein in the case on hand, it is reported that the trial has already been commenced and a witness was examined on 11.12.2024 and for examination of the PW1,2,3 and 5, the case is posted on 18.12.2024. Therefore, the ratio laid down in the aforesaid judgment cannot be made applicable to the case on



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hand, since trial is in progress.

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9. Considering the nature of allegations against this petitioner and the present stage of the trial, this Court is not inclined grant bail to the petitioner. Therefore, this criminal original petition is dismissed. Since the petitioner has been denied bail, the trial court is directed to conclude the trial within a period of three months from the date of receipt of a copy of this order.

sd/-

13/12/2024

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/02/2025

Sub-Assistant Registrar

(C.S. I / II / III / IV)

Madurai Bench of Madras High Court,
Madurai - 625 023.

DSK

TO

1 THE JUDGE,
SPECIAL COURT TO DEAL WITH NDPS ACT CASES,
MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.

3 THE INSPECTOR OF POLICE,
NIB CID POLICE STATION,
DINDIGUL DISTRICT.

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



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ORDER
IN
CRL OP(MD) No.21672 of 2024
Date :13/12/2024

SA/VR/SAR. /27.02.2025/12P/5C

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