



CRL OP(MD). No.23031 of 2024

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

Date : 23/01/2025

PRESENT

The HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL OP(MD). No.23031 of 2024

Vigneswaran @ Vicky

... Petitioner/ Accused Rank not known

Vs

The State of Tamil Nadu,
Rep By,
The Inspector of Police,
Pettai Police Station,
Tirunelveli District.
(Crime No.7 of 2024.)

... Respondent/Complainant

For Petitioner : Mr.V.Angusamy, Advocate

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.483 of BNSS

PRAYER :-

For Bail in Cr.No.7 of 2024 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner, who was arrested and remanded to judicial custody on



CRL OP(MD). No.23031 of 2024

13.01.2024 for the offences under Sections 8(c) r/w 20(b)(ii)(c), 29(1) and 25 of NDPS

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Act in Crime No.7 of 2024 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the Sub-Inspector of Police received an information on 06.01.2024 at about 22.30 hours that some attempt is being made to sell ganja. This information was recorded in the General Diary and a police team was formed and on reaching the spot, the police team found a white colour scorio car and two pulsar motor bikes. Some persons were seated inside the car. They were identified as A3 to A7. On enquiry, it was ascertained that A1 had sent A2 to Andra Pradesh to purchase huge quantities of ganja and he was instructed to sell the same to A4 to A7. A3 came to the spot in scorio car and A4 to A7 came in two motor bikes for the purpose of purchasing ganja. Since the accused persons waived their right under Section 50 of NDPS Act, the car was searched and two bags were found, out of which, 1 bag contained 14.200 kgs of ganja and another bag contained 10.800 kgs of ganja. Thereafter, an FIR was registered. There are totally 8 accused persons in this case and the petitioner has been arrayed as A8.

3. The learned counsel for the petitioner submitted that a false case has been foisted against the petitioner. He further submitted that there is violation of noncompliance under Section 52A of the NDPS Act, and there is an unexplained delay in producing the seized ganja both before the Court and the FSL. He further



CRL OP(MD). No.23031 of 2024

WEB COPY

submitted that since there is a mandatory violation and the petitioner has suffered incarceration from 13.01.2024 and the investigation has already been completed and the trial is yet to commence. The learned counsel requested this Court to enlarge the petitioners on bail by imposing any conditions.

4.Per contra the learned Additional Public Prosecutor relying upon the counter affidavit submitted that insofar as the petitioner is concerned, he has been implicated in this case based on the confession of A4. He further submitted that the petitioner is the main accused, who acted as a mediator between the seller and the buyer of the narcotic drugs. The learned Additional Public Prosecutor placing reliance upon Section 35 of the NDPS Act submitted that culpable mental state for the petitioner is there in order to raise a statutory presumption under Section 54 of the Act and therefore, the petitioner must also be made liable for the commercial quantity that was recovered from A3 to A7. In view of the same, the learned Additional Public Prosecutor vehemently opposed the grant of bail to the petitioner.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. There are totally 8 accused persons in this case and the petitioner has been arrayed as A8. The specific case of the prosecution is that based on instructions of A1, A2 had procured the ganja from Andra Pradesh and it was carried by A3 in a



CRL OP(MD). No.23031 of 2024

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car with an intention to sell the same to A4 to A7. A4 to A7 are said to have come to the spot in two motor bikes and parked these motor bikes near the car which was driven by A3. When they were inside the car, the police team is said to have surrounded the car and there was recovery of 2 bags, out of which, one bag contained 14.200 grams of ganja and other contained 10.800 grams of ganja. This recovery took place on 07.01.2024. Even though the counter affidavit does not state as to when the contraband was taken before the Magistrate, the learned Additional Public Prosecutor confirmed the fact that the contraband was produced before the Magistrate with Form 91 when the accused persons, who were arrested, were brought before the Court seeking for judicial custody. Thereafter, the contraband was deposited in the MALCANA.

7. The investigation has been completed and the police report has been filed in this case. It is therefore relevant to take note of Section 161 statement recorded from LW13. He is a Head Constable who states that he was assisting the Inspector of Police in preparing requisition letter and producing contraband before the Court on 03.05.2024. He further states that the samples were taken in the presence of the learned Magistrate from each bag in compliance with Section 52A of NDPS Act. Thereafter, the letter from the Court was received on 13.05.2024 and the samples reached the FSL on 14.05.2024. The date on which the samples reached the FSL is



CRL OP(MD). No.23031 of 2024

quite evident from the Forensic examination report. The samples were examined on 16.05.2024 and the report was given on the same day.

8. Thus, it can be seen that even though, the contraband was seized on 07.01.2024, it came before the Court for drawing of samples on 03.05.2024 and whereas, the requisition was made to the FSL on 13.05.2024 and according to LW13, it reached the FSL on 16.05.2024. However, the FSL report shows that it was received on 14.05.2024.

9. In view of the above, there is a prima facie case for the petitioner to put forth his contentions with respect to the delay in the contraband reaching the FSL and the contradiction in the dates on when it was received by the FSL. This directly touches upon the compliance of Section 52 A of NDPS Act.

10. In the light of the above prima facie finding, this Court is convinced that the twin conditions under Section 37 of NDPS Act is satisfied. This Court also takes into consideration the fact that the petitioner has one previous case and was arrested and remanded to judicial custody on 13.01.2024 and the probability of the case being disposed of in the near future is also unlikely. That apart, this Court also takes into consideration the fact that except A3, all the other accused persons have been enlarged on bail in this case and hence this Court is inclined to grant bail to the petitioner subject to the following conditions.



CRL OP(MD). No.23031 of 2024

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11. Accordingly, the criminal original petition is ordered and the petitioner is ordered to be released on bail on executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned II Additional District Judge for NDPS Act Cases, Madurai, and on further conditions that:-

[a] 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.

[b] the petitioner shall report before the learned II Additional District Judge for NDPS Act Cases, Madurai during every date of hearing without fail.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner 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].



CRL OP(MD). No.23031 of 2024

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

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Section 269 BNS 2023.

sd/-
23/01/2025

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23/01/2025
Sub-Assistant Registrar ()
Madurai Bench of Madras High Court,
Madurai - 625 023.

LR

To

1.The II Additional District Judge for NDPS Act Cases,
Madurai.

2.The Inspector of Police,
Pettai Police Station,
Tirunelveli District.

3.The Superintendent,
Central Prison, Palayamkottai.

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

+1 CC to M/s.V.ANGUSAMY, Advocate (SR-742[I] dated 23/01/2025)

ORDER
IN
CRL OP(MD) No.23031 of 2024
Date :23/01/2025



CRL OP(MD). No.23031 of 2024

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