



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

Date : 20/06/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN
CRL OP(MD). Nos.10908 and 10909 of 2023

WEB COPY

R.Rajapandi

... Petitioner/Accused No.2 in
CRL OP(MD).No.10908 of 2023

Cliff Augustine Rowe,

... Petitioner/Accused No.3 in
CRL OP(MD).No.10909 of 2023

Vs

State rep. By

The Inspector of Police,
Kodaikanal Police Station,
Dindigul District.

(Crime No.311 of 2022) ... Respondent/Complainant in both CRL OPs.

(In both CRL Ops.)

For Petitioner : Mr.Antony Santhosh.U,
Advocate.

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

COMMON PRAYER :-

For Bail in Crime No.311 of 2022 on the file of the respondent police

COMMON ORDER : The Court made the following order :-

The petitioners/A2 and A3, who were arrested and remanded to judicial custody on 19.11.2022 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B), 22(c), 25, 21 and 29(i) of NDPS Act, 1985 in Crime No.311 of 2022 on the file of the respondent police, seek bail.

2.The case of the prosecution is that the petitioners were found in illegal possession of 1.100kgs of Ganja and 100 grams of (Psilocybin) mushrooms. Hence, the case.

3.The learned counsel for the petitioners would submit that there are three accused involved in this case, whereas, only from the first accused, the alleged contraband weighing 1.100kgs of Ganja and 100 grams of (Psilocybin) mushrooms were seized by the respondent police. He further submit that the petitioners were not in possession of the contraband and no recovery was made from them. Hence, he would seek for bail.



4. On perusal of the seizure mahazar reveals that the accused persons were in conscious possession of the contraband weighing 1.100kgs of Ganja and 100grams of (Psilocybin) mushrooms, which is a commercial quantity. Therefore, as per the provision of Sections 35 and 54 of NDPS Act states that there is a presumption against the accused persons and there is a bar under Section 37 of NDPS Act clearly mandates that the accused has to satisfy three conditions under section 37 of NDPS Act:

i) First condition is that the prosecution must be given an opportunity to oppose the application; and

ii) The second is, that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence.

iii) The concerned Court must satisfy that he is not likely commit any offence while on bail.

5. However, in the case on hand, the petitioners have failed to satisfy the conditions as contemplated under Section 37 of the NDPS Act.

6. At this juncture, the learned counsel for the petitioners would submit that the mandatory provisions are not complied with by the first respondent herein. In support of his contentions, he also relied upon the decision of this Court in **Rajkumar @ Kumar Vs. The Inspector of Police, Trichy** reported in **2022 (1) TNLR 811 (MAD) (MB)**, whereas, in the case on hand, the first respondent seized not only 1.100kgs of Ganja and also seized 100grmas of (Psilocybin) mushrooms, which is a commercial quantity and as such, the judgment relied on by the learned counsel for the petitioner is not applicable to the case on hand.

7. Taking note of the serious allegations made against the petitioners and there is no change in circumstances, this Court is not inclined to grant bail to the petitioners.

8. In the result, these Criminal Original Petitions are dismissed. Liberty is granted to the petitioners that whatever grounds raised by the petitioners herein can be raised before the trial Court by way of examination of the Investigation Officer.

sd/-

20/06/2023

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/ 07 /2023

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

MRN



TO

1. The Inspector of Police,
Kodaikanal Police Station, Dindigul
District.
2. The Officer In-Charge, Sub Jail, Palani.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER

IN

CRL OP (MD) . Nos.10908 and 10909 of 2023
Date :20/06/2023

RD (04/07/2023) 3P 4C