



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

Wednesday, the Second day of December Two Thousand Fifteen

PRESENT

The Hon`ble Ms.Justice V.M.VELUMANI

CRL OP(MD) No.22269 of 2015

KASIPANDI

... PETITIONER/ ACCUSED NO.2

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE
NIBCID, DINDIGUL,
DINDIGUL DISTRICT.
(CR NO.76 OF 2015)

... RESPONDENT/ COMPLAINANT

For Petitioner : Mr.P.SENGUTTARASAN Advocate

For Respondent : Mr.K.ANBARASAN, Govt. Advocate (Crl. Side)

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

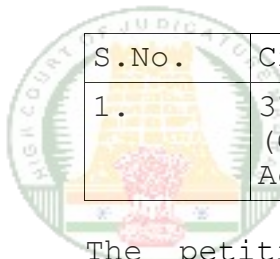
ORDER : The Court Made the following order :-

The petitioner, who is arrayed as A2, in Crime No.76 of 2015 on the file of the respondent police, was arrested on 02.06.2015 for the alleged offences punishable under Sections 8(c) r/w 20(b)(ii)(C) and Section 25 of the NDPS Act, and hence, seeks bail.

2. The case of the prosecution is that when the respondent police was conducted a vehicle check-up on 02.06.2015 at 06.30 a.m., they found a car bearing Registration No.TN58E 6462 with two persons. They possessed 3 gunny bags containing 56kgs of ganja and after completing the formalities, the contraband was seized and the case was registered for offence under Sections 8(c) r/w 20(b)(ii)(C) and Section 25 of the NDPS Act.

3. The learned counsel for the petitioner submitted that the petitioner is innocent and he has been falsely implicated in this case and the contraband was not seized in the presence of independent witness and not followed the mandatory provisions of N.D.P.S Act with regard to the search and seizure.

4.The learned Government Advocate (Crl.side) submitted that the petitioner was found in possession of 56 kgs of ganja, which is a commercial quantity. The respondent police followed the procedure laid down in the NDPS Act. The petitioner involved in previous case as follows:



S.No.	Crime No. and Section	Police Station	Quantity
1.	37/2015 u/s 353, 307 and 8 (C) r/w20(b) (ii) © NDPS Act	Sedapatti P.S.	130 kgms

The petitioner was detained under Act 14 of 1982 by the District Collector, Dindigul in Detention OrderNo.55 of 2015 dated 12.07.2015. The earlier two petitions filed by the petitioner for enlarging the petitioner on bail, were dismissed by this Court. If the petitioner is enlarged on bail, he will continue the similar activities. Therefore, the petitioner is not entitled to get bail. He further submitted that Section 37 of NDPS Act is applicable to the present case because the contraband is a commercial quantity.

5.The learned counsel for petitioner submitted that the detention order dated 12.07.2015 was set aside by this Court by order dated 04.11.2015 made in HCP No.1096 of 2015 and the petitioner submitted that the petitioner is in judicial custody from 02.06.2015 and he is entitled to get statutory bail.

6.The learned counsel for the petitioner submitted that the petitioner is in judicial custody from 02.06.2015 and he is entitled to statutory bail.

7.Per contra, the learned Government Advocate (Crl.side) contended that the NDPS Act, 1985, is a special self contained Act enacted to prevent offences against society being committed. Section 37 of the NDPS Act, imposes conditions for granting bail when the quantum of contraband seized is commercial quantity. The petitioner is accused in another case and if he is enlarged on bail, he will indulge in similar offences and prayed for dismissal of petition.

8.Section 37 of NDPS Act reads as follows.

"37.Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a)every offence punished under this Act shall be cognizable;

(b)no person accused of an offence punishable for [offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i)the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii)where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2)The limitations on granting of bail specified in clause(b) of sub-Section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

9.As per Section 37(1)(b)(ii) of the Act, if the Public Prosecutor opposes the bail, the accused will be entitled to bail only if there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The petitioner in present case is an accused in another case of similar nature and contraband seized is of commercial quantity.



10. In view of this fact and as per Section 37(1)(b)(ii) of the Act, the contention of the learned counsel for the petitioner is untenable and the contention of the learned Government Advocate (Crl.side) has considerable force and is acceptable. In the result, this petition is dismissed.

sd/-
02/12/2015

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

TO

- 1 THE INSPECTOR OF POLICE
NIBCID, DINDIGUL, DINDIGUL DISTRICT.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.22269 of 2015
Date :02/12/2015

NS
NS/PM-MP/SAR II/10.12.2015 : 3P/4C