



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

Wednesday, the Nineteenth day of April Two Thousand Seventeen

PRESENT

The Hon`ble Dr.Justice G.JAYACHANDRAN

CRL OP(MD) No.2517 of 2017

THAVAMANI

... PETITIONER/SOLE ACCUSED

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
KILVELUR POLICE STATION,
NAGAPATTINAM DISTRICT.
(CR.NO.6 OF 2017)

... RESPONDENT/ COMPLAINANT

For Petitioner : M/S.K.KUMRAVEL Advocate

For Respondent : M/S K.V.RAJARAJAN, Govt. Advocate (Crl. Side)

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

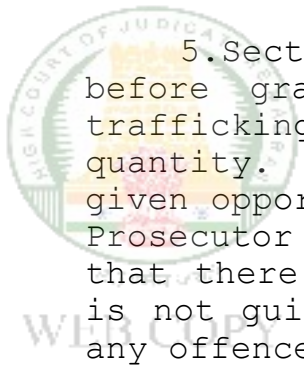
ORDER : The Court Made the following order :-

The petitioner/sole accused who was arrested and remanded to judicial custody on 04.01.2017 for the offences under Section 8(C) r/w 22(C) of the NDPS Act in Crime No.6 of 2017 on the file of the respondent/Police, seeks bail.

2.The case of the prosecution is that based on the secret information, the petitioner was intercepted while alighting from the bus at Aiyadimangalam Bus stop and on search of his body, 550 grams of Diazepam which is a psychotropic substance prohibited under the NDPS Act, was seized from the petitioner.

3.The case of the petitioner is that the Police has falsely implicated him in this case and he is innocent of the crime.

4.It is contended by the counsel for the petitioner that though FIR in this case was registered at 3.00 p.m on 04.01.2017, the Arrest Card and Seizure Mahazar prepared at 12.15 p.m carry the crime number which makes the prosecution case doubtful. Further, it is contended that the FIR does not contain whether before search of the body of the petitioner, the petitioner was informed about his right to be searched before the Gazetted Officer or the Judicial Magistrate and therefore there is a violation of Section 50 of the NDPS Act while conducting the search. The learned counsel submits that in the said circumstances the petitioner is entitled for bail though he is alleged to have been in possession of commercial quantity of Diazepam.



5. Section 37 of NDPS Act imposes twin conditions on Courts before granting bail in respect of the offenders involved in trafficking of narcotic and psychotropic substances in commercial quantity. Those twin tests are, (i) the Public Prosecutor should be given opportunity to oppose the application and (ii) when the Public Prosecutor opposes the application, the Court should be satisfied that there are reasonable ground for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

6. In the present case, the learned Government Advocate (Criminal Side) filed counter affidavit, stating that the psychotropic substance seized from the petitioner is over and above the commercial quantity and there are materials to show that the petitioner knowingly involved in the trafficking of psychotropic substance.

7. Perusal of the CD file indicates that contraband has been seized from the possession of the petitioner on personal search. There is no indication that the petitioner was informed about his right to be examined before the Gazetted Officer or Judicial Magistrate before carrying out the search.

8. In view of the above fact, this Court is inclined to grant bail to the petitioner, subject to the following conditions:-

(i) The petitioner shall execute 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 Additional District and Sessions Judge/Special Judge for E.C. Act Cases, Thanjavur.

(ii) The petitioner shall report before the respondent-police daily at 10.30 a.m. until further orders.

(iii) The petitioner shall not involve in any offence in violation of Section 37 of the NDPS Act.

sd/-

19/04/2017

/ TRUE COPY /

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

TO

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE/
SPECIAL JUDGE FOR E.C. ACT CASES, THANJAVUR.
2. THE OFFICER INCHARGE, SUB JAIL, NAGAPATTINAM.
3. THE INSPECTOR OF POLICE,
KILVELUR POLICE STATION, NAGAPATTINAM DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to M/S.K.KUMRAVEL Advocate SR.No.20500

ORDER IN

CRL OP(MD) No.2517 of 2017

Date : 19/04/2017