



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

Tuesday, the Fourteenth day of February Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL OP(MD) No.24033 of 2016
and
CRL OP(MD) NO.24037 OF 2016

1 RANI
2 PASUPATHI

... PETITIONERS/ACCUSED 2 & 3
IN CRL OP.NO.24033 OF 2016

1 ANAND
2 VIJAYA

...PETITIONERS/ACCUSED 1 & 4
IN CRL OP.NO.24037 OF 2016

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
VELIPALAYAM POLICE STATION,
NAGAPATTINAM DISTRICT.

... RESPONDENT/COMPLAINANT.IN
BOTH CASES

For Petitioner : M/S.K.KUMARAVEL Advocate IN BOTH CASES

For Respondent : MR.P.KANDASAMY, Govt. Advocate (Crl. Side) IN
BOTH CASES

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 CRL.PC
AND PETITION FOR BAIL UNDER SEC.439 CRL.PC

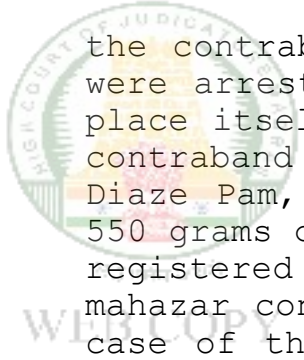
ORDER : The Court Made the following order :-

The Petitioners/A1 & A4 in Crl.O.P(MD)No.24037 of 2016 were arrested and remanded to judicial custody on 14.11.2016, for the offence punishable under Section 8(c) r/w 20(C) of N.D.P.S.Act, in Crime No.463 of 2016, on the file of the respondent police, seek bail.

2. The Petitioners/A2 & A3 in Crl.O.P(MD)No.24033 of 2016 apprehend arrest at the hands of the respondent police for the alleged offences punishable under Section 8(c) r/w 20(C) of N.D.P.S.Act, in Crime No.463 of 2016, seek anticipatory bail.

3. The case of the prosecution is that the accused are in possession of 550 grams of Diaze Pam powders.

4. The learned counsel appearing for the petitioners would submit that the petitioners are innocent and they have been falsely implicated in this case and even as per the case of the prosecution,



the contraband was seized on 14.11.2016 at 13.00 Hrs and A1 and A4 were arrested by the Police at about 11.30 a.m., in the occurrence place itself, but the FIR was registered only at 3.00 p.m., and the contraband was weighed by the respondent police as 500 grams of Diaze Pam, but at the time of Mahazar, the contraband is shown as 550 grams of Diaze Pam. He would further submit that though FIR was registered at 3.00 p.m., the arrest card, arrest memo and seizure mahazar contain Crime Numbers, which create serious doubts over the case of the prosecution. He would further submit that in similar circumstances, this Court was pleased to grant bail in CrI.O.P.(MD) No.4634 of 2015, CrI.O.P.(MD)Nos.6289, 2066 and 2073 of 2016.

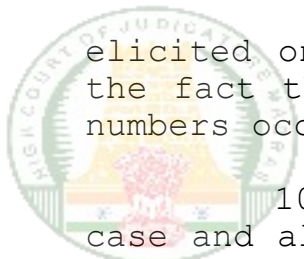
5. The learned Government Advocate (crl.side) appearing for the respondent would contend that it is a curable irregularities and it would not entitle the accused to get bail in this case, as there is a specific bar under Section 37 of the NDPS Act. It is also admitted that A1 and A4 were arrested on 14.11.2016 and confession of A1 was recorded on 14.11.2016 and on the basis of the confession, the remaining petitioners are shown as accused in this case and the contraband was seized from A1 alone.

6. I have heard the submissions made by the learned counsel appearing on either side and perused the materials available on record including the copy of the FIR, arrest card, arrest memo and seizure memo in respect of A1 and also the order of bail granted by this Court in similar cases and also the counter filed by the respondent police.

7. According to the prosecution, on 14.11.2016, based on the secret information, the police team went to the house of A1, and on seeing the police team, all the four accused ran away and A1 & A4 were arrested at 11.30 a.m. The contraband was seized from A1 alone. The arrested accused along with seized contraband were brought to the Police Station at 15.00 Hrs on the same day and an FIR was registered at the same time and confession of A1 was recorded and on the basis of the confession, the remaining petitioners are shown as accused and the accused are ranked as A1, A4, A2, and A3 respectively.

8. On perusal of the records would show that confession was obtained from A1 between 3.30 Hrs and 14.15 Hrs. Seziure Mahazar was preferred at 13.15 Hrs., in respect of 550 grams of contraband. Observation Mahazar was preferred on 14.40 Hrs. The arrest card and arrest memo show the same time of the arrest of A1. The seizure mahazar shows the seizure of 550 grams of contraband, though it is mentioned in the FIR that seized contraband from A1 was weighed as 500 grams of Diaze Pam powder. As per the schedule of NDPS Act, 500 grams of Diaze Pam is a commercial quantity.

9. It is admitted that 500 grams of Diaze Pam Powder was seized from A1. On the confession of A1, A2 to A4 are implicated in this case and the contraband was only from A1. The seized contraband is a commercial quantity, as per the NDPS Act. mentioning of crime numbers in arrest card, arrest memo and seizure Mahazar before the registration of the FIR in this case can be



elicited only at the time of trial. The prosecution has to prove the fact that under what circumstances the mentioning of the crime numbers occurs in the said arrest memo, arrest card and Mahazar.

10. Considering the above facts and circumstances of the case and also there is no previous case of similar offences against A4, A2 and A3, this Court is inclined to grant bail to the 2nd petitioner / A4 alone in Crlo.O.P.(MD)No.24037 of 2016 and further, this Court is also inclined to grant anticipatory bail to the petitioners 1 and 2 /A2 and A3 in respect of Crlo.O.P.(MD)No.24033 of 2016, of course, subject to certain conditions:-

11. Accordingly, the petitioners 1 and 2 /A2 and A3 in respect of Crlo.O.P.(MD)No.24033 of 2016 are ordered to be released on bail, in the event of arrest or on their appearance, before the learned Additional District and Sessions Judge / Special Judge for E.C.Act, Cases, Thanjavur, on condition that the petitioners shall execute a bond each for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that the petitioners shall report before the learned Additional District and Sessions Judge / Special Judge for E.C.Act, Cases, daily at 10.30 a.m., until further orders. The petitioners shall comply with the condition stipulated under Section 438 Cr.P.C., scrupulously.

12. The petitioners shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy is made ready, failing which, the petition for anticipatory bail stands dismissed.

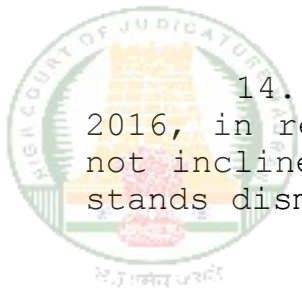
13. Accordingly, the petitioner / A4 in Cr1.O.P(MD)No.24037 of 2016 is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, each for a like sum to the satisfaction of the learned Additional District and Sessions Judge / Special Judge for E.C.Act, Cases, and on further condition that:

[a] the petitioner/A4 shall report before the Additional District and Sessions Judge / Special Judge for E.C.Act Cases, Thanjavur, daily at 10.30 a.m., until further orders and also report before the respondent Police, as and when required, on summons, for interrogation.

[b] the petitioner/A4 shall not tamper with evidence or witness either during investigation or trial.

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

[d] 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].



14. The Criminal Original Petition in CrI.O.P(MD)No.24037 of 2016, in respect of the Petitioner / A1 is concerned, this Court is not inclined to grant bail, at this stage, and hence, this petition stands dismissed.

sd/-
14/02/2017

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/ TRUE COPY /

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

TO

- 1 ADDITIONAL DISTRICT AND SESSIONS JUDGE/
SPECIAL JUDGE FOR E.C.ACT.,CASES, THANJAVUR.
- 2 THE INSPECTOR OF POLICE,
VELIPALAYAM POLICE STATION, NAGAPATTINAM DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 4 The SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

+1. CC to M/S.K.KUMARAVEL Advocate SR.No.8044

ORDER
IN
CRL OP (MD) No.24033 of 2016
AND
CRL OP (MD) NO.24037 OF 2016
Date :14/02/2017

AAM PM PN SAR2 14.02.2017 2P 6C