



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P. (MD) No.1244 of 2015

Intelligence Officer,
Narcotics Control Bureau
Madurai Sub Zone, Madurai.
(In F.No.48/1/2/2014/NCB/MDU)

... Petitioner/Respondent

Vs.

Shanthi @ Naga Jyothi

... Respondent/Petitioner

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to cancel the bail granted by the learned Additional District Sessions Judge (Special Court for E.C and NDPS Act Cases), Pudukkottai in Cr.M.P.No.1200 of 2014, dated 17.10.2014.

For Petitioner : Mr.C.Arul Vadivel Alias Sekar
Special Public Prosecutor for NCB Cases
For Respondent : Mr.J.Lawrance

O R D E R

The petitioner/defacto complainant filed this petition seeking the relief to cancel the bail granted by the learned Additional District Sessions Judge (Special Court for E.C and NDPS Act Cases), Pudukkottai in Cr.M.P.No.1200 of 2014, dated 17.10.2014.

2.The case of the prosecution is that on 08.08.2014, the petitioner herein has seized 40.05 Kgs of Ganja from the respondent and she was arrested and remanded into judicial custody on 09.08.2014. Hence, a case was registered against the respondent and two others for the offences punishable under Sections 8(c) r/w. 20(b)(2)(c), 28 and 29 of NDPS Act in file No.48/1/2/2014/NCB/MDU, dated 08.08.2014.

3.The learned counsel for the petitioner submitted that while the respondent was on bail, she involved in a similar case and the same was registered in Crime No.691/2014, dated 07.12.2014 for the offence under Section 8(c) r/w 20(b)(ii)(A) of NDPS Act against her before the Inspector of Police, Srivilliputhur Town Police Station. He further submits that if the respondent is allowed to continue on bail, she will tamper the witnesses, she has a chance to abscond and she will Indulge in similar activities. Hence, he prays for



cancellation of bail which was granted by the Additional District Sessions Judge (Special Court for E.C and NDPS Act Cases), Pudukkottai in Cr.M.P.No.1200 of 2014, dated 17.10.2014.

4. On the other hand, the learned counsel appearing for the respondent submitted that the respondent was released on bail only on the basis of medical grounds. The source of power to grant bail has to be found only under Section 439 of Cr.P.C and Section 37 of the NDPS Act should be read into Section 439 of the Cr.P.C., while considering the bail application for grant of bail. Under exceptional circumstances, the Special Court in its discretion can grant bail. The respondent was forced to give a confession statement which was dictated to her and subsequently after enlarging on bail in the present case, another case was foisted against the respondent under small quantity of 500 grams of ganja in order to cancel the bail granted to her on medical grounds. Hence, he prays to dismiss the petition.

5. The submissions made by the learned counsels appearing for either side are considered. The petitioner herein is the complainant in Crime No. 48/1/2/2014/NCB/MDU. He registered the case against four persons, in which the respondent herein is arrayed as second accused. It is alleged during the time of occurrence, the petitioner and another accused in this case found possession of 40 kilograms of Ganja, thereby a case has been registered punishable under Section (c) r/w. 20(b)(2)(c), 28 and 29 of NDPS Act, 1995. After made arrest the Presiding Officer, Additional District Sessions Judge (Special Court for E.C and NDPS Act Cases), Pudukkottai, granted bail in favour of the petitioner. Against the order passed in Cr.M.P.No.1200 of 2014, dated 17.10.2014, now, the petitioner, who is the complainant in the above said case filed this application for cancellation of the bail. The first and foremost contention raised by the petitioner by the counsel appearing for the petitioner is that the trial Court granted bail to the respondent only by considering the fact that the respondent is having some illness. Further added that the said ground is not sufficient for enlarging the accused on bail. Further, he submitted in the petition itself, medical facilities are fully available in the prison itself. Accordingly, the bail granted by the Additional District Sessions Judge (Special Court for E.C and NDPS Act Cases) is necessarily to be cancelled.

6. Now, according to the submission made by the respondent, it is true that after granting bail by the trial Court, the case was proceeded normally without any hurdle and as of now, the case is posted for the examination of Investigating Officer. Further, it is to be noted that in the trial proceedings, for the past three years, she regularly appeared and participated in the trial proceedings. The said promptness on the respondent shows that she is a law abiding citizen.

<https://hcservices.ecourts.gov.in/hcservices/>

7. In the said event, the petitioner herein did not dispute the



attendance of the respondent before the trial Court at the time of trial. In each and every case, until the conclusion of trial, we cannot come to the decision that the accused person is found guilty for the charges framed against him. Furthermore, the regular attendance of the petitioner shows that, she is a law abiding citizen. Apart from that the petitioner did not show any specific ground in which the respondent is trying to tamper the witnesses.

8. In a case of **State of U.P through CBI Vs. Amarmani Tripathi** reported in **(2005) 8 Supreme Court Cases 21**, our Honourable Apex Court observed as follows:

"The matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

Applying the principles laid down in the above said judgment and considering the fact that the respondent was suffering from illness, which was relied on by the respondent as a ground for getting bail, this Court comes to conclusion that the reason is not coming within the purview of Section 37(1)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. However, as of now since the case is posted for the examination of the Investigation Officer, cancellation of bail is unwarranted. Hence, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Sessions Judge
(Special Court for E.C and NDPS Act Cases),
Pudukkottai.



2. The Intelligence Officer,
Narcotics Control Bureau
Madurai Sub Zone, Madurai.

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

+ 1 CC TO Mr.C.ARUL VADIVEL @ SEKAR, ADVOCATE IN SR No. 48751
+ 1 CC TO Mr.J.LAWRANCE, ADVOCATE IN SR No. 48875

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TE/GT/SAR-4 : 26/02/2018 : 4P/6C

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