



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

Tuesday, the Eleventh day of September Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD) No.15133 of 2018

POTHUMANI

... PETITIONER / A4

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
ELUMALAI POLICE STATION,
MADURAI DISTRICT.
(CR NO.112 OF 2018)

... RESPONDENT / DE-FACTO COMPLAINANT

For Petitioner : M/S.V.ANGUSAMY Advocate

For Respondent : MR.M.ASOKAN, Govt. Advocate

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

ORDER : The Court Made the following order :-

The petitioner was arrested on 05.05.2018, in Crime No.112 of 2018, on the file of the respondent Police Station, for the offence under Sections 8(c), 20(b)(ii)(c) and 25 of the NDPS Act, 1985. The petitioner's earlier bail petition was dismissed by this Court on 25.07.2018, because there was virtually nothing in the bail petition which would satisfy the parameters set out under Section 37 of the NDPS Act.

2. The petitioner has, now, renewed the bail petition and the learned Counsel appearing for the petitioner made elaborate submissions.

3. This Court posed a specific question to Mr.M.Asokan, learned Government Advocate as to the materials available against the petitioner. The learned Government Advocate contended that a police party, while on their regular patrol duty on 05.05.2018, at about 9.00 am, saw the accused persons assembled together in a suspicious manner. They were apprehended on the spot. But, one Chandran, one of the members of the group, ran away. Therefore, the remaining four persons alone came to be arrested. When they were searched, the contraband in question was recovered from the first accused, namely, Kottaiyan. It weighed 31 kilograms and 800 grams. A sum of

Rs.5,43,000/- was recovered from the petitioner herein and it is said to represent the sale proceeds.

4. On behalf of the petitioner, an affidavit has been filed by a close relative of the petitioner, namely, Eishwari. It is specifically averred in the said affidavit that on 04.05.2018, at about 9.00 am, a police team came to their street and searched the house of the petitioner herein and arrested all the members of the family. The arrestee included Jancy, the granddaughter and grandson, Dharma. It is claimed that the marriage of the said Jancy was fixed on 29.08.2018 and that the aforesaid sum had been mobilized for the purpose of meeting out the marriage expenses. It is further stated in the said affidavit that even though all the members of the family were taken away, the grandchildren were subsequently let out.

5. This Court, after going through the contents of the First Information Report, is of the view that the case of the prosecution does not inspire the confidence of this Court. It is simply impossible to believe that all the accused had assembled together and were standing on the back side of a village temple and were in possession of a sum of Rs.5,43,000/-. It is seen that the second accused, Gopinath is the son-in-law of the petitioner. The third accused, Petchiyammal is her daughter. The fifth accused is her husband. Therefore, if at all they want to share the sale proceeds, they would only meet in their house. It is also admitted by the prosecution that the petitioner is not having any previous cases. It is pertinent to note that the petitioner is aged about 55 years. It is quite possible that the fifth accused, Chandran, is the real culprit and that in order to apprehend him, the police have chosen to implicate all the members of the family. It is also seen that the petitioner's daughter, Petchiyammal as well as petitioner's son-in-law are also not having any previous cases. These circumstances clearly bolster the contention now urged by the learned Counsel for the petitioner that the real target of the police was the fifth accused, Chandran and since he escaped, all the members of the family have been roped in.

6. It is also admitted by the prosecution that no contraband was recovered from the petitioner. All that was recovered from the petitioner was only a sum of Rs.5,43,000/-. This recovery is explained in the affidavit filed by Eishwari, that the same had been earmarked for meeting out the marriage expenses of the petitioner's granddaughter, Jancy.

7. In view of the foregoing facts, this Court is of the view that both the parameters set out under Section 37 of the NDPS Act are amply satisfied in this case. In this view of the matter, this Court is inclined to grant bail to the petitioner, but with certain conditions. Accordingly, the petitioner is ordered to be released on bail, subject to the following conditions:

(1) 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 Judge, Special Court for NDPS Act cases, Madurai.

(ii) the petitioner is directed to appear before the respondent police as and when required for interrogation.

(iii) on breach of any of the aforesaid conditions, the 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 on bail by the 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].

8. It is made clear that all these observations have been made only for the purpose of granting relief in this criminal original petition and that it shall not be taken advantage of by the petitioner in the trial or in any other collateral proceedings.

sd/-
11/09/2018

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

TO

1 THE JUDGE,
SPECIAL COURT FOR NDPS ACT CASES, MADURAI.

2 THE INSPECTOR OF POLICE,
ELUMALAI POLICE STATION, MADURAI DISTRICT.

3 THE OFFICER INCHARGE,
SPECIAL PRISON FOR WOMEN, MADURAI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.V.ANGUSAMY Advocate SR.No. 17346

ORDER
IN
CRL OP(MD) No.15133 of 2018
Date :11/09/2018

JM/MMS/SAR 1/17.09.2018/3P/6C