



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

(Criminal Jurisdiction)

Date on which reserved : 14/06/2019

Date on which pronounced:18.06/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.6413 of 2019

Chandrasekaran

... Petitioner/Sole Accused

Vs

State Rep.by
The Inspector of Police,
Melattur Police Station,
Thanjavur District.
Crime no.2/2019.

... Respondent/Complainant

For Petitioner : Mr.V.Kathirvelu, Senior Counsel for
M/s.B.Anandan, Advocate

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor,

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

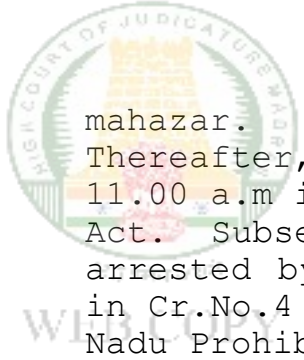
PRAYER :-

For Bail in Crime No. 2 of 2019 on the file of the Respondent Police.

ORDER : The Court Made the following order :-

This petition has been filed by the sole Accused seeking bail for the alleged offences punishable under Sections 8(c) r/w 20(b), (ii) (C) of NDPS Act in Cr.No.2 of 2019.

2.The case of the prosecution is that on 02.01.2019 at about 09.00 a.m, while a police team led by Mr.K.Thiruvankadam, Sub Inspector of Police, Melattur Police Station, was on surveillance, on the South Bank of Vennaru, Aathur, near one Mohamed Ali's petty shop, the petitioner was going by carrying a gunny bag on his head. On seeing the Police team, he dropped the said gunny bag and ran away from the scene of occurrence. The Police team has opened the said gunny bag and found that it contains ganja and hence, after getting a balance from Mohamed Ali's petty shop, it was weighed and found its weight was 21 kgs and the same has been seized under a



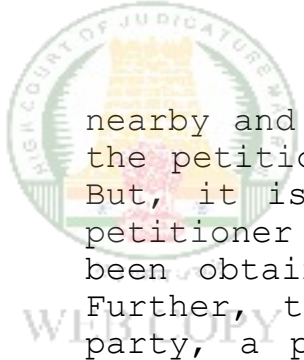
mahazar. Thereafter, a sample of 100 gms has been taken. Thereafter, a case was registered in Melattur Police Station at 11.00 a.m in Cr.No.2 of 2019 under Sections 20(b), (ii) (A) of NDPS Act. Subsequently, on the same day, at 8.00 p.m, the petitioner was arrested by the Sub Inspector of Police, Ammapettai Police Station in Cr.No.4 of 2019 under Sections 4(1) (aaa) and 4(1-A) of the Tamil Nadu Prohibition Act and remanded to judicial custody.

3.After knowing the said fact, the respondent Police formally arrested the petitioner in this case on 10.01.2019 at Sub-Jail, Papanasam.

4.The learned senior counsel for the petitioner has submitted that the said Mohamed Ali has filed an affidavit before the trial court denying the prosecution case that he has not noticed that the accused was in possession of ganja and on seeing the police, he dropped the gunny bag containing ganja and escaped from the said place. He further submitted that there is no evidence for linking the petitioner with the aforesaid crime. He further submitted that the respondent Police has not immediately produced contrabands before the concerned Court and on the contrary, they have simply presented the Form 95 alone and hence, the Court has returned the said Form 95 on 10.1.2019 and only subsequently, they have produced the contrabands before the trial court. He further submitted that the earlier application was dismissed by this Court on the ground that some previous cases are pending against the petitioner, but, actually one case is pending, that too under the Prohibition Act and the said case was also registered only after registering the present case. He further submitted that the petitioner is in custody from 10.01.2019 i.e for the past 150 days. Therefore, he prayed to grant bail to the petitioner.

5.Per contra, the learned Additional Public Prosecutor appearing for the respondent has submitted that the petitioner was found in possession of 21 kgs of ganja and the said quantity comes within the category of commercial quantity. He further submitted that on enquiry, the respondent came to know that it was the petitioner, who was going with the aforesaid contraband and on seeing the police, he dropped the said gunny bag and ran away from the said place. He further submitted that already, the petitioner is having one case in Cr.No.4 of 2019 under Sections 4(1) (aaa) and 4(1-A) of the Tamil Nadu Prohibition Act on the file of Ammapettai Police Station and the investigation is still pending. Hence, he strongly opposed this petition.

6.A perusal of Case Diary shows that in the F.I.R, it is stated that on 02.01.2019 at 9.00 a.m, when the police team was on surveillance near one Mohamed Ali's petty shop, one person was going, by carrying a gunny bag on his head and on seeing the police, he dropped the said gunny bag there itself and jumped into a nearby ~~and subsequently, on enquiry with the persons, who are residing~~ (thorny trees field) and escaped from the said place



nearby and passers-by, the respondent came to know that it was only the petitioner herein, who was going with the aforesaid contraband. But, it is not stated that who gave such a statement linking the petitioner with the said contraband. Further, no confession has been obtained and no recovery has been made from the petitioner. Further, though it is stated in the F.I.R, on seeing the police party, a person, who was carrying the contraband jumped into the nearby 'வேல் கருவைக்காடு' (Thorny trees field), in the rough sketch and in the observation mahazar, no such 'வேல் கருவைக்காடு' (Thorny trees field) is mentioned. It raises a doubt as to whether any occurrence took place as alleged by the prosecution. Further, in the counter filed by the respondent, it is stated that the petitioner herein also involved in another case in Cr.No.4 of 2019 under Sections 4(1) (aaa) and 4(1-A) of the Tamil Nadu Prohibition Act on the file of Ammapettai Police Station. Admittedly, the said F.I.R was registered on the same day at 10.30 p.m. i.e after registering the present F.I.R. Further, it cannot be said that the said case is of the similar nature of this case.

7. Taking into consideration of the fact that the petitioner is in custody for the past 150 days and also the fact that in the F.I.R, it is not stated that from whom, the respondent came to know that the petitioner herein, who was the person going with contraband and also the fact, no confession has been obtained and no recovery has been made from the petitioner and also the fact that no similar type of previous case is pending against the petitioner, this Court is satisfied that there are reasonable grounds to believe that the petitioner is not guilty of the offence, with which he is charged and further, he is not likely to commit any offence, while on bail, as envisaged under Section 37(i)(b)(ii) of the NDPS Act. Hence, this Court is inclined to grant bail to the petitioner by imposing certain conditions:-

[a] the petitioner 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 under EC Act Cases, Thanjavur.

[b] the petitioner shall report before the respondent Police daily at 10.00 a.m for a period of three weeks and thereafter, as and when required for the interrogation.

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

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

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Judicial 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 Trial Court itself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

18/06/2019

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

TO

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE/
SPECIAL JUDGE UNDER EC ACT CASES,
THANJAVUR.
2. THE INSPECTOR OF POLICE,
MELATTUR POLICE STATION,
THANJAVUR DISTRICT.
3. THE OFFICER INCHARGE, SUB JAIL,
PAPANASAM.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S.B.ANANDAN Advocate SR.No.9953

ORDER

IN

CRL OP(MD) No.6413 of 2019

Date :18/06/2019

MS/VR/SAR-3/19.06.2019/4P.6C