



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

(Criminal Jurisdiction)

Date on which reserved : 12/06/2019

Date on which pronounced : 18/06/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.6749 of 2019

Pandi,

... Petitioner/1st Accused

Vs

The State rep.by
The Inspector of Police,
Melur Police Station,
Madurai District.
Cr.No.83 of 2019.

... Respondent/Complainant

For Petitioner : M/s.S.Muniyandi,
For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor,

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

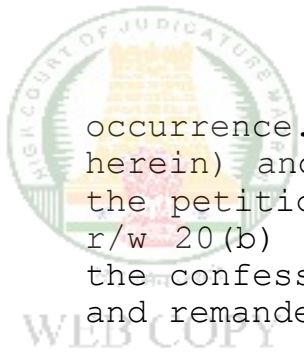
PRAYER :-

For bail petition in cr.no.83 of 2019 on the file of the respondent police.

ORDER : The Court Made the following order :-

This petition has been filed by the Accused-1 seeking bail for the alleged offences punishable under Sections 8(C) r/w 20(b) (ii) (C), 27(A) and 25 of NDPS Act in Cr.No.83 of 2019.

2.The case of the prosecution is that on 09.02.2019 at about 09.00 hours, a police team led by Mr.Jesu, Inspector of Police, on secret information, went to the Sathyapuram Bus stop and found that two persons were in possession of a white gunny bag. On seeing the police, second accused ran away from the scene of



occurrence. The police arrested the accused No.1 (petitioner herein) and seized the contraband and registered a case as against the petitioner and another in Cr.No.83 of 2019 under Sections 8(C) r/w 20(b) (ii) (C), 27(A) and 25 of NDPS Act. The Police recorded the confession statement of accused No.1 at about 10.15 to 11.00 a.m and remanded him to judicial custody.

3.The learned counsel for the petitioner has submitted that the petitioner is an innocent and he has been falsely implicated in the above case. He further submitted that the contraband was not seized from the petitioner. He further submitted that the provisions of Section 50 of the NDPS Act are not followed. He further submitted that the contraband was allegedly seized on 09.02.2019, but it was not produced before the Court till now. Further, the arrest card and confession statement contained the crime number. These facts would create a doubt about the recovery of the contraband from the petitioner. He further submitted that if the petitioner is released on bail, he will co-operate for trial and therefore, he prayed to grant bail to the petitioner.

4.Per contra, the learned Additional Public Prosecutor appearing for the respondent has submitted that the petitioner was found in possession of 60 kgs of ganja and the said quantity is a commercial quantity. Further, he submitted that the co-accused is still absconding. At this stage, the petitioner cannot be released on bail. Hence, he strongly opposed this petition.

5.At this juncture, it would be relevant to refer to the following decisions:

i)In **the State of Madhya Pradesh Vs. Kajad** reported in **AIR 2001 SC 3317**, wherein the Hon'ble Supreme Court has held that for granting bail in the case of commercial quantity, the Court must, on the basis of the records, produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence with which he is charged and further, he is not likely to commit any offence, while on bail.

ii)In **Union of India Vs Rattan Mallik @ Habul**, reported in **[2009 CRI.L.J.3042]** (Supreme Court), wherein, the Honourable Supreme Court, in paragraph No.14, has held as follows:

"14.We, may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence he is charged with and



further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.

6. From the aforesaid decisions, it is clear that while considering the application for bail, with reference to Section 37 of the NDPS Act, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding whether or not the accused has committed an offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence he is charged with. Further, he is not likely to commit an offence, while on bail. It is also clear that satisfaction of the Court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.

7. In **State of Haryana Vs. Ranbir Alias Rana**, reported in (2006) 5 SCC 167, the Hon'ble Supreme Court has held that Section 50 of the NDPS Act would be applicable only in a case if personal search of the accused and not when it is made, in respect of some baggage like a bag, article or container, etc., which the accused at the relevant time was carrying. In this case, as per prosecution case, the petitioner was carrying a gunny bag containing ganja and the said bag was searched. Therefore, the provisions of Section 50 of the Act would not be applicable.

8. In this case, a huge quantity of ganja i.e 60 kgs was recovered from the petitioner. The petitioner has not made out a case for getting bail. The facts with regard to mentioning of the crime number in arrest card and confession statement are matters for appreciation of evidence at trial. Therefore, this Court is not inclined to grant bail to the petitioner.

8. For the aforesaid reasons, this Criminal Original Petition is dismissed. Considering the fact that the petitioner is in custody from 09.02.2019, the respondent is directed to file final report at early.

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 INSPECTOR OF POLICE,
MELUR POLICE STATION,
MADURAI DISTRICT.

2. THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.

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

+1 CC to MR.S.MUNIYANDI, Advocate (SR-9919[I] dated 18/06/2019)

ORDER

IN

CRL OP (MD) No.6749 of 2019

Date :18/06/2019

VS

AE/JC/SAR-III (20.06.2019) 4P 5C