BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date on which reserved : 12/07/2019

Date on which pronounced : 18/07/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD). No.9324 of 2019

J.Gowtham ... Petitioner/Accused No.1

Vs

State rep. by
The Inspector of Police,
NIBCID, Madurai
Cr.No.12/2018. ... Respondent/Complainant

For Petitioner : M/s.K.Prabakaran,
Advocate.

For Respondent : Mr.V.Neelakandan,
Government Advocate (Crl.Side)

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

PRAYER :-

For bail in C.C.No.406 of 2018 on the file of the Honourable Principal Special Court for EC and NDPS Act, Madurai.

ORDER : The Court Made the following order :-

This petition has been filed by the accused No.1, seeking bail for the alleged offences punishable under Sections 8(c) r/w 20 (b)(ii)(C), 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 in NIBCID Cr.No.12/2018 on the file of Inspector of Police, NIBCID, Madurai.

2.The case of the prosecution is that on 26.01.2018 at 6.30 a.m, the respondent Police got secret information about the illegal transportation of ganja and on the basis of the said information, the respondent police went to Usilampatti-Theni main road (between Chettiyarpatti Village and Kanavai) and were on

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surveillance. At about 6.45 a.m, a car bearing Regn.No.TN-09-BS-2217 (white innova car) came from east. The respondent Police gave signal to stop the said vehicle. But the driver of the said vehicle did not stop the car and drove the said car towards Theni and hence, the Police party chased the said vehicle and intercepted the same near Kanavai. The driver and another person, who was sitting on the side of the driver tried to escape from that place. The respondent Police nabbed the driver. But another person who was sitting on the side of the driver ran away from that place. The police party enquired with the driver and he disclosed his name as 'Vignesh' (A-2) and the name of the person, who ran away from the said place is Gowtham, S/o.Jeyaraj (petitioner herein). Thereafter, the Police party introduced themselves and also informed A-2 that they want to search the said vehicle and also they informed him that if he requires, a search can be made in the presence of a Judicial Magistrate or a Gazetted Officer. But he said that the Police party themselves can search the vehicle. Accordingly, they have searched the said vehicle and found that in 8 white gunny bags, there was totally 204 kilograms of dried ganja and confession statement was also obtained from A-2. He has stated that the said vehicle belongs to A-1 and they transported the aforesaid ganja from Andhra. Thereafter, the said vehicle, the aforesaid ganja and one cellphone and two Number Plates have been seized by the respondent under a mahazar and they also took a sample. Thereafter, A-2 was sent to remand and the seized articles were also sent to the concerned Court. Subsequently, on 24.10.2018, the petitioner herein was arrested and remanded to judicial custody and from that date onwards, he is in custody.

3.The learned counsel for the petitioner has submitted that the petitioner is an innocent person and he has been falsely implicated in the above case, based on the confession given by the co-accused (A-2). He further submitted that nothing has been recovered from the petitioner and the petitioner is in custody from 24.10.2018 *i.e* for the past 8 months. He further submitted that the petitioner is having a permanent residence and if he is released on bail, he will co-operate for trial and he will not abscond and therefore, he prayed to grant bail to the petitioner.

4.Per contra, the learned Additional Public Prosecutor has submitted that when the respondent Police was on surveillance on 26.01.2018 at about 6.45 a.m, on the Usilampatti-Theni Main road, near Kanavai, a white Innova car bearing Regn.No.TN-09-BS-2217 came from the eastern side and on seeing the said car, the respondent Police gave signal to stop the said vehicle. But the driver of the said vehicle did not stop the vehicle and drove the said vehicle towards Theni and hence, the Police party chased the said vehicle and intercepted the same near Kanavai and at that time, the petitioner herein, who was sitting on the side of the driver, ran away from the said place and the driver was nabbed and he disclosed his name as Vignesh and the name of the person, who ran away from the said place as Gowtham. He further submitted that when the said

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vehicle was searched, it was found that in 8 white gunny bags, totally 204 kilograms of ganja. The driver was examined and he disclosed his name and also the petitioner's name and also said that the petitioner is the owner of the said vehicle and both of them have purchased the said ganja from Andhra and transported the same. He further submitted that the investigation reveals that the petitioner is the owner of the said vehicle and that also would show that he used his vehicle for illegal transportation of ganja. He further submitted that already, this Court has granted bail to A-2 in Crl.O.P.(MD).No.8240/2018, dated 23.05.2018, but subsequently, the said order was cancelled by this Court in Crl.M.P.(MD). No.4113/2018, dated 11.06.2018 and a non-bailable warrant is pending against him. He further submitted that if the petitioner is released on bail, he also will abscond and hence, he prayed to dismiss the petition.

5.In the F.I.R, it is stated that when the Police party was on surveillance on the Usilampatti-Theni Main road, near Kanavai on 26.01.2018 at about 6.45 a.m, a white Innova Car bearing Regn.No.TN-09-BS-2217 came from the eastern side and when the respondent Police gave a signal to stop the said vehicle, the driver of the said vehicle did not stop the vehicle, but drove the same towards Theni and hence, the Police party chased the said vehicle and intercepted the same near Kanavai and at that time, they have noticed that the petitioner herein, who was sitting on the side of the driver, ran away from the said place. The Police party was able to nab the driver alone (A-2) and on enquiry, he disclosed his name and also the petitioner's name. So, it appears that the petitioner herein also came in the said vehicle. Further, in the F.I.R, it is stated that the said vehicle was searched and found in 8 gunny bags, totally 204 kilograms of ganja. Further, A-2 gave a confession statement stating that the petitioner herein is the owner of the said vehicle and that being so, without his knowledge, the driver could not have transported the said ganja.

6.In view of Section 37(1)(b)(ii) of the NDPS Act unless there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence, while on bail alone will entitle him to a bail. In this case, it is stated that the petitioner is the owner of the said car, but the petitioner has not given any plausible explanation as to how his car has been used for transporting the ganja. So, an adverse inference has to be drawn against the petitioner.

7.Taking into consideration of the aforesaid facts, this Court is of the view that the petitioner has not satisfied the conditions as envisaged under Section 37(1)(b)(ii) of the NDPS Act. Therefore, this petition is liable to be dismissed.

8.Accordingly, this petition is dismissed. Taking into consideration of the fact that the petitioner is in custody from 24.10.2018 and also the fact that NBW is pending against A-2, the

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respondent is directed to take effective steps to secure A-2. Further, the trial Court is also directed to take steps to forfeit the bail bond executed by A-2 and initiate proceedings against the sureties and also address the high officials of the respondent for securing A-2 and dispose of the case at early.

sd/-
18/07/2019

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

TO

1 THE PRINCIPAL SPECIAL JUDGE FOR EC AND NDPS ACT, MADURAI

2 THE INSPECTOR OF POLICE, NIBCID, MADURAI

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

ORDER
IN
CRL OP(MD) No.9324 of 2019
Date :18/07/2019

VS
JMN/VR/SAR-2/26.07.2019/4P-5C

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