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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 17/07/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD). No.10034 of 2019

Mariappan @ Kabali Mariappan ... Petitioner/sole Accused

- Vs-

State Rep.by
The Sub Inspector of Police,
Pappakudi Police Station,
Tirunelveli District.
(Crime No.140 of 2019) ... Respondent/Complainant

For Petitioner : M/s.S.Sundara Pandian,
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.140/2019 on the file of the Respondent Police.

ORDER : The Court Made the following order :-

The petition has been filed by the sole Accused seeking bail for the alleged offence punishable under Section 4 (1-A) of the Tamil Nadu Prohibition Act, 1937, in Crime No.140 of 2019.

2. The case of the prosecution is that the petitioner was found in possession of 10 bottles of Honey Day Brandy containing poisonous substances and hence he has committed offence punishable under Section 4 (1-A) of the Tamil Nadu Prohibition Act, 1937 (Here in after referred to as the Act).

3. The learned counsel for the petitioner has submitted that the petitioner is an innocent person and he has been falsely implicated in this case. He further submitted that the petitioner is in custody for more than 65 days. Hence, he prayed bail to the petitioner.



4. The learned Additional Public Prosecutor has submitted that the petitioner was found in illegal possession of 10 bottles of Honey Day Brandy containing poisonous substances and hence, he opposed this petition.

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5. The Section 4 (1-A) of the Act reads as follows:-

"4 (1-A) Where in the case of an offence falling under Clause (a), (clause (aa), clause (aaa),) clause (b) clause (h), or clause (i) of sub-section (1), the liquor or any intoxicating drug involved contains any ingredient which is likely to cause death or grievous hurt to the consumer, then the offender, on conviction, shall be punished-

(i) if death has ensued due to its consumption with rigorous imprisonment for life and with fine which shall be not be less than five thousand rupees; and

(ii) in any other case, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to seven thousand rupees."

6. In this case, it is not stated that any death has occurred and therefore Sub Section (ii) alone will attract. As per the said provision, the punishment prescribed is Rigours Imprisonment for a term which may extend to ten years and with fine which may extend to seven thousand rupees.

7. In the case of **Rajeev Chaudhary Vs State (NCT) of Delhi AIR 2001 SC 2369: (2001) 5 SCC 34: LNIND 2001 SC 1182**, the Honourable Supreme Court, has held as follows:

"In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 of the IPC, imprisonment can vary from



minimum to maximum of 10 years and it cannot be aid that imprisonment prescribed is not less than 10 years."

8. In view of the above decision of the Hon'ble Supreme Court, since the punishment provided under Section 4 (1-A)(ii) of the Act is rigorous imprisonment for a term which may extend to ten years and also fine, it would not fall under clause (i) of proviso (a) to Section 167 (2) Cr.P.C. On the contrary it would fall under clause (ii) of proviso (a) to Section 167 (2) Cr.P.C. In this case, the petitioner is in custody for more than 60 days i.e., 65 days. So far the charge sheet has not been filed. Therefore, this Court is of the view that the petitioner is entitled to get default bail as per the clause (ii) of proviso (a) to Section 167 (2) Cr.P.C. Hence this Court is inclined to grant bail to the petitioner with certain conditions.

[a] the petitioner is ordered to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Alangulam.

[b] the petitioner shall report before the respondent police daily at 10.00.a.m for a period of one month 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/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned 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].

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

sd/-
17/07/2019

/ TRUE COPY /

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



TO

1. THE JUDICIAL MAGISTRATE, ALANGULAM.
 2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
 3. THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI.
 4. THE SUB INSPECTOR OF POLICE,
PAPPAKUDI POLICE STATION, TIRUNELVELI DISTRICT.
 5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to M/S.S.SUNDARA PANDIAN Advocate SR.No.11846

ORDER

IN

CRL OP(MD) No.10034 of 2019

Date :17/07/2019

MS/VR/SAR-1/17.07.2019/4P.7C