



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 21/08/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) . No.11045 of 2019

Ajith ... Petitioner/Accused No.9

Vs

State represented by
The Inspector of Police,
Othakadai Police Station,
Madurai District.
(Crime No.97 of 2018).

... Respondent/Complainant

For Petitioner : M/s.S.Veeranasamy,
Advocate.

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

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

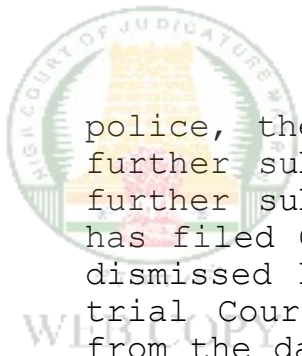
PRAYER :-

for bail in Crime No.97 of 2018 on the file of the Respondent Police

ORDER : The Court Made the following order :-

The petitioner, who has been arrested by the respondent police and remanded to judicial custody on 23.02.2018 for the offences punishable under Sections 8 (c) 20 (b) (ii) (c) NDPS of the Narcotic Drugs and Psychotropic Substances Act, in Crime No.97 of 2019, seeks bail.

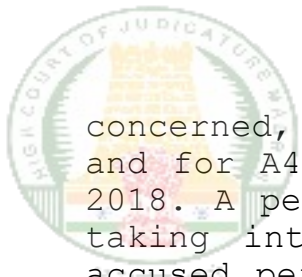
2.The learned counsel appearing for the petitioner has submitted that this petitioner has been arrayed as A9 and he has been falsely implicated in the above case. He further submitted that no recovery has been made from the petitioner and only based on the confession said to have been given by A1 before the respondent



police, the petitioner herein has been arrayed as accused No.9. He further submitted that already A1 to A4 were released on bail. He further submitted that on previous occasion, the petitioner herein has filed Crl.OP.(MD)No.18281 of 2018 seeking bail and the same was dismissed by this Court on 15.02.2019 and gave a direction to the trial Court to dispose of the case within a period of six months from the date of receipt of a copy of the said order. But, the trial Court has not made any progress in the trial and hence, he prayed to grant bail to the petitioner.

3.Per contra, the learned Additional Public Prosecutor appearing for the respondent has submitted that on 17.02.2018, at about 15.00 hours, based on the secret information, the police party went behind Rajakoor Apartment, Block No.14, Door No.35, and they have found 10 persons were there and on seeing the police party, they attempted to escape from the said place. He further submitted that the police party was able to arrest only four persons and made enquiry with them and thereafter, 68 Ganja pockets weighing 150 kgs were recovered from the nearby thorny bush. He further submitted that the police party has noticed the presence of the petitioner in the place of occurrence and only his name was ascertained from the other accused persons. He further submitted that A1 has obtained bail by suppressing the material facts and hence, a petition has been filed to cancel the bail granted in favour of him and the same has been allowed by this Court in Crl.M.P.(MD)No.4314 of 2018. A2 & A3 were already released on bail in Crl.OP(MD)No.8631 of 2018 and A4 was already released on bail in Crl.OP(MD)No.8637 of 2018, taking note of the period of incarceration alone but Section 37 of NDPS Act not at all referred to and therefore, the petitioner cannot rely upon the said orders. He further submitted that the earlier petition which was filed by this petitioner in Crl.OP.(MD)No.18281 of 2018 was dismissed by this Court on 15.02.2019 and at the time of dismissing the said petition, this Court has directed the trial Court to dispose of the case within a period of six months. In pursuance of the said order, the trial Court has framed charges against the accused persons and on 20.08.2019 P.W.1 was examined before the trial Court. For examining further witnesses, the case has been adjourned to 03.09.2019 and therefore, he strongly opposed this petition.

4.In the FIR, it is clearly stated that on seeing the police party, all the accused persons including the petitioner herein tried to escape from the scene of occurrence, however, the police managed to arrest four accused persons. The averments made in the FIR would show that the police team has noticed the presence of the petitioner herein in the scene of occurrence and his name only was ascertained through the other accused persons. Further, for cancelling the bail which was already granted to A1 in Crl.OP(MD)No.8107 of 2018, the respondent police has filed Crl.M.P.(MD)No.4314 of 2018 before this Court and the same was allowed. Insofar as the accused Nos.2 & 3 are



concerned, this Court has granted bail in Crl.OP(MD)No.8631 of 2018 and for A4, bail was granted by this Court in Crl.OP(MD)No.8637 of 2018. A perusal of the aforesaid orders would show that this Court taking into consideration of the period of incarceration of the accused persons, granted bail to them, but, Section 37 of the NDPS Act was not at all referred to.

5. At this juncture, it would be relevant to refer to the decision in **Satpal Singh Vs State of Punjab, 2018 (2) MWN (Cr.No.504 (SC))**, wherein, the Hon'ble Supreme Court in para No.15 has observed as follows:-

"15. Be that as it may, the order dated 21.09.2017 passed by the High Court does not show that there is any reference to Section 37 of the NDPS Act. The quantity is reportedly commercial. In the facts and circumstances of the case, the High Court could not have and should not have passed the order under Sections 438 or 439 Cr.P.C. without reference to Section 37 of the NDPS Act and without entering a finding on the required level of satisfaction in case the Court was otherwise inclined to grant the bail. Such a satisfaction having not being entered, the order dated 21.09.2017 is only to be set aside and we do so."

6. In view of the aforesaid decision of the Hon'ble Supreme Court since Section 37 of NDPS Act has not been referred to in the aforesaid orders, the petitioner cannot rely upon the aforesaid orders for getting bail.

7. In this case, the quantity of the Ganja involved is very huge quantity i.e., 150 Kgs, which comes under the category of commercial quantity and as such the petitioner has to satisfy the conditions envisaged under Section 37 of NDPS Act. The petitioner has not satisfied the aforesaid conditions. Further, according to the learned Additional Public Prosecutor, already one witness was examined before the trial Court on the side of the prosecution on 20.08.2019 and the case has been adjourned to 03.09.2019 for examining the other witnesses.

8. Taking into consideration of all the aforesaid facts, this Court is of the considered view that this petitioner has not made out a case for getting bail. Accordingly, this Criminal Original Petition is dismissed.

9. However, considering the fact that the petitioner is in custody for a long period, this Court has in Crl.OP(MD)No.18281 of 2018 by the order dated 15.02.2019 directed the Special Judge (For EC & NDPS Act Cases), Madurai, to dispose of the case within a period of six months from the date of receipt of a copy of the said order. But, the Special Judge (For EC & NDPS Act Cases), Madurai, by the letter, dated 13.08.2019 has requested this Court to grant three



more months to dispose the aforesaid case.

10.Hence, this Court directs the Special Judge (For EC & NDPS Act Cases), Madurai to dispose the case within a period of three months from the date of receipt of a copy of this order.

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21/08/2019

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

TO

- 1 THE SPECIAL JUDGE FOR EC & NDPA ACT CASES, MADURAI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4 THE INSPECTOR OF POLICE,
OTHAKADAI POLICE STATION,
MADURAI DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.11045 of 2019
Date :21/08/2019

DSS
AE/JC/SAR-III (29.08.2019) 4P 6C