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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 23/07/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD). No.9856 of 2019

R.Ragul

... Petitioner/Accused (Single)

Vs

State Rep.by

The Inspector of Police,

Thoothukudi South Police Station,

Thoothukudi District.

Crime No.456 of 2019

... Respondent/Complainant

For Petitioner : M/s.R.Anand,
Advocate.

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

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in Cr.No.456 of 2019 on the file of the respondent police.

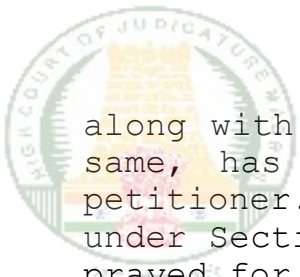
ORDER

The petitioner, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 8(c), 8(b) r/w 20(a) (i) and 20(b)(ii) (C) of Narcotic Drugs and Psychotropic Substances Act, 1985,, in Crime No. 456 of 2019, seeks anticipatory bail.

2. Heard both sides.

3.The case of the prosecution is that the petitioner herein was a cultivator of cannabis plant in his land and the same has been cut and the weight comes to 2.200 Kgs and hence, he is liable to be punished for the offences under Sections 8(c), 8(b) r/w 20(a) (i) and 20(b)(ii) (C) of NDPS Act.

3.The learned counsel for the petitioner has submitted that the petitioner is a student and he is aged about 19 years and even without knowing the nature of the said plant, he cultivated the same



along with other plants and the respondent police, after seeing the same, has cut the said plant and registered a case against the petitioner. He further submitted that the limitation prescribed under Section 37(1)(b) will not apply to this case and therefore, he prayed for grant of anticipatory bail to the petitioner.

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4. The learned Additional Public Prosecutor has submitted that the seized contraband will not come under the category of commercial quantity and it will come only under the category of 'intermediate quantity' and further, the act of the petitioner, is punishable under Section 20(a)(i) of NDPS Act. He fairly conceded that the provision of Section 37(1)(b) of NDPS Act will not attract to the facts of this case.

5. It is relevant to refer to Sections 20 (a) (b)(i) and 37 of NDPS Act:

"20. Punishment for contravention in relation to cannabis plant and cannabis.- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder:-

(a) cultivates any cannabis plant: or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable,-

(i) where such contravention related to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees;"

"37. Offences to be cognizable and non-bailable.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

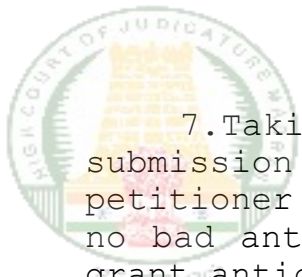
(b) no person accused of an offence punishable for [offences under commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

6. A perusal of the aforesaid provision would make it clear that Section 37(1)(b) of NDPS Act will not attract to the facts this case.



7. Taking into consideration of the aforesaid fact and also the submission made by the learned counsel for the petitioner that the petitioner is a student and he is aged about 19 years and there is no bad antecedents reported against him, this Court is inclined to grant anticipatory bail to him with certain conditions.

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8. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the Special Court for N.D.P.S. Act cases, Madurai, Madurai District, on condition that the petitioner shall execute 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 respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(i) If the petitioner fails to surrender before the concerned Magistrate within a period of 15 days, this order shall stand automatically cancelled.

(ii) the petitioner shall report before the respondent police daily at 10.30 a.m for a period of three weeks and thereafter, as and when required before the respondent police for interrogation.

(iii) the petitioner shall not tamper with evidence or witness either during investigation or trial.

(iv) the petitioner shall not abscond either during investigation or trial.

(v) On breach of any of the aforesaid conditions, the learned Magistrate/Trial 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 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].

(vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

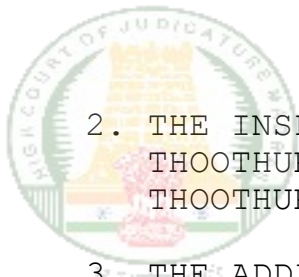
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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE SPECIAL JUDGE FOR N.D.P.S ACT CASES,
MADRURAI, MADURAI DISTRICT.



2. THE INSPECTOR OF POLICE,
THOOTHUKUDI SOUTH POLICE STATION,
THOOTHUKUDI DISTRICT.

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

+1. CC to M/S.R.ANAND Advocate SR.No.12201

ORDER

IN

CRL OP (MD) No.9856 of 2019

Date :23/07/2019

MS/PN/SAR-3/26.07.2019/4P.5C