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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 05/08/2019

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD). No.10832 of 2019

1.Mokkamayan
2.Kasirajan

... Petitioners/ Accused No.2 & 3

Vs

State Rep.by
The Inspector of Police,
Austinpatti Police Station,
Madurai District.
Crime No.143/2019.

... Respondent/Complainant

For Petitioners : Mr.V.Ramalingam
Advocate.

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

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

PRAYER :-

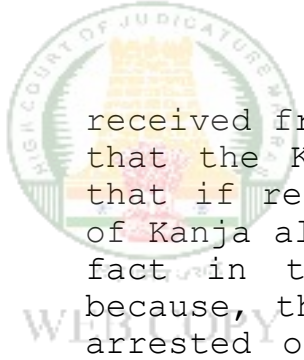
For bail in Cr.No.143/2019 on the file of the respondent police.

ORDER : The Court Made the following order :-

This petition has been filed by the petitioners/ Accused Nos.2 and 3, seeking bail for the alleged offence under Sections 8(c) r/w 20(b)(ii)(c) and 25 NDPS Act.

2. Heard both sides

3. The learned counsel for the petitioner has submitted that the petitioners are innocent persons and they have been falsely implicated in the above case. He further submitted that as per FIR on 22.05.2019, at about 10.30.am, at PRC Colony behind the house of one Kasirajan, one person was sitting on a Motor Cycle bearing Registration No.TN 58 AB 6400 and two persons were standing nearby. He further submitted that in the FIR, it is also stated that all three accused persons were arrested, but, consent letter was



received from A1 only, further, in the seizure mahazar, it is stated that the Kanja was recovered from A1 alone. He further submitted that if really these two petitioners also were found in possession of Kanja along with A1, the respondent would have mentioned the said fact in the seizure mahazar. He further submitted that merely because, the petitioners were found nearby A1, the petitioners were arrested on 22.05.2019 and remanded to judicial custody and from that date onwards, they are in custody. He further submitted that they are not having any bad antecedents and therefore, he prayed to grant bail to the petitioners.

4.Per contra, the learned Additional Public Prosecutor has submitted that on secret information, the police went to the PRC Colony and on surveillance, they noted that A1 was sitting on a Motor Cycle bearing Registration No. TN 58 AB 6400 and nearby, these two petitioners were also standing. He further submitted that all three accused persons were found in joint possession of 34 kgs Kanja and hence, the said Kanja was seized. He further submitted that investigation is not yet completed. Therefore, he strongly opposed this petition. However, he fairly conceded that no previous case is pending against the petitioner.

5.Though the learned Additional Public Prosecutor has submitted that all the three accused persons were found in possession of 34 kgs of Kanja, a perusal of the FIR, shows that one person was sitting in Motor cycle bearing Registration No.TN 58 AB 6400 and two persons were standing nearby. In the FIR, no where it is stated that the said Kanja was in whose possession. Further in the seizure mahazar, it is stated that the Kanja and the two wheeler were seized from the accused No.1 only. If really, the petitioners herein were also found in possession of Kanja, the respondent police would have mentioned in the seizure mahazar that all the accused persons were in joint possession of Kanja. Admittedly, no previous case is pending against the petitioners. Therefore, this Court is satisfied that there are reasons to believe that the petitioners are not guilty of the aforesaid offence and they are not likely to commit any offence while on bail as envisaged under Section 37 of the NDPS Act.

6.Taking into consideration of the aforesaid facts, this Court is inclined to grant bail to the petitioners by imposing conditions:

[a] the petitioners are 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 Additional District Judge, Principal Special Court for EC and NDPS Act Cases, Madurai.

[b] the petitioners shall report before the Respondent Police, daily at 10.30.AM for a period of one Month and thereafter, as and when required for the interrogation.



[c] the petitioners shall not abscond either during investigation or trial.

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial.

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[e] 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].

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

sd/-

05/08/2019

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

TO

1. THE ADDITIONAL DISTRICT JUDGE,
PRINCIPAL SPECIAL COURT FOR EC AND NDPS ACT CASES,
MADURAI.
2. THE INSPECTOR OF POLICE,
AUSTINPATTI POLICE STATION, MADURAI DISTRICT.
3. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.V.RAMALINGAM Advocate SR.No.12882

ORDER

IN

CRL OP(MD) No.10832 of 2019

Date :05/08/2019

MS/VR/SAR-4/05.08.2019/3P.6C