



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 12/12/2019

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD). No.15707 of 2019

Ayyampillai

... Petitioner/Accused No.3

Vs

The State Represented by
The Inspector of Police,
NIB CID, Madurai
Crime No.75/2019.

... Respondent/Complainant

For Petitioner : Mr.V.Kathirvelu, Senior Counsel
For Mr.K.Prabhu, Advocate

For Respondent : Mr.A.Robinson,
Government Advocate (Crl.Side)

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

PRAYER :-

For Bail in Crime No.75/2019 on the file of the Respondent Police.

ORDER : The Court made the following order :-

Heard the learned Senior Counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent.

2.The petitioner is figuring as an accused in Crime No.75 of 2019 registered on the file of the Inspector of Police, NIB CID, Madurai, for the offences under Section 8(c) r/w. Section 20(b)(ii)(c) and 25 of NDPS Act.

3.The case of the prosecution is that on 05.06.2019 at about 09.00 a.m., the police received secret information that a person carrying Ganja is likely to pass through Thirvathavoor to Melur main road shortly. Thereupon, the police party begun to check every vehicle passing through the said point. During the said vehicle check up, they intercepted the vehicle bearing Registration No.TN 59 0330 (Bajaj Pulsar) ridden by one Dharma with one Karthick on the pillion. On interception, the bike rider Dharma stopped the vehicle and escaped from the spot leaving the pillion rider/Karthick behind. Karthick was holding a bag. On inspection, it was found to contain 23 Kgs of Ganja. Karthick was arrested and subsequently detained as a drug offender under Tamil Nadu Act 14 of 1982.



4.Subsequent interrogation of Karthick revealed that the petitioner herein who is none other than his father had handed over the ganja bag to him for eventual delivery to the other vendors.

5.The petitioner herein was arrested and remanded to custody on 01.10.2019. Hence, he seeks bail.

6.It is not in doubt that the contraband involved in this case is a commercial quantity. Therefore, the twin tests laid down in Section 37 of NDPS Act, 1985, will have to be fulfilled. The Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence in question and that he is not likely to commit any offence while on bail.

7.This Court adjourned the case on more than one occasion to enable the learned Government Advocate (Crl. Side) to make a positive statement with regard to the availability of materials against the petitioner for fastening penal liability. This Court also called upon the learned Government Advocate (Crl. Side) to file a counter by the investigating officer. It is now admitted before me that except the confession of the co-accused (A1/Karthick), there is no other material against the petitioner herein.

8.However, the learned Government Advocate (Crl. Side) submitted that the petitioner is involved in as many as seven cases out of which six are under the NDPS Act. The details of the cases in which the petitioner is involved are as under:-

S. No	Crime No.	Sections	Station
1	Cr.No.180/14	U/s.8(c) r/w 20(b)(ii)(B) of NDPS Act.	Maduri, NIB CID, Wing
2	Cr.No.1589/17	U/s.8(c) r/w 20(b)(ii)(c) & 27A, 29(1) & 25 of NDPS Act.	Sellur PS, Madurai
3	Cr.No.2031/17	U/s.8(c) r/w 20(b)(ii)(c) & 25 of NDPS Act.	Sellur PS, Madurai
4	Cr.No.1520/17	U/s.8(c) r/w 20(b)(ii)(c) & 25 of NDPS Act.	Tallakulam PS, Madurai
5	Cr.No.330/18	U/s.8(c) r/w 20(b)(ii)(A) of NDPS Act and 43 of Prisons Act	Dindigul Town, West P.S.
6	Cr.No.06/19	U/s.8(c) r/w 20(b)(ii)(c) & 25 of NDPS Act.	Kanjipuram, NIB CID, Wing
7	Cr.No.675/11	U/s. 147, 148, 294(b), 323, 324, 452 & 506(ii) of IPC	Mellur PS, Madurai.



9.The learned Government Advocate (Crl. Side) pointedly contented that the Hon'ble Supreme Court in case after case has emphasised that the conditions set out in Section 37 of NDPS Act are conjunctive and both the tests will have to be fulfilled for the purpose of granting bail. Obviously this Court will not be in a position to give a finding that the petitioner is not likely to indulge in another offence while out on bail. If an accused is not having any previous case, one can give a finding that he is not likely to commit any offence while on bail. I must concur with the contention of the learned Government (Crl. Side) that such a finding cannot be given by me.

10.The learned Senior Counsel appearing for the petitioner drew my attention to two recent decisions, one rendered by a learned Judge of this Court and the other by the Hon'ble Supreme Court, for the proposition that mere confession of the co-accused not being a substantive piece of evidence is wholly insufficient to sustain any finding of guilt.

11.In the decision reported in **[2019 (2) MWN (Cr.) 242 (Kumar @ Ranjithkumar Vs. State)]**, a learned Judge of this Court held as under:-

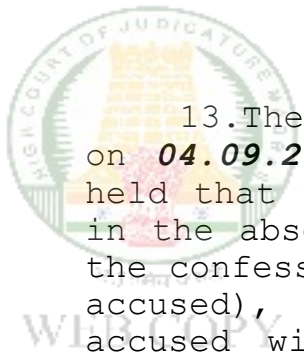
"A careful reading of the above judgments makes it very clear that a confession can be made admissible in evidence under Section 67 of of the Act as a substantive evidence as against the maker of the Statement. But in respect of the Co-Accused, the said Statement can never be treated as a substantive evidence. At the most, it can be considered as a relevant evidence under Section 30 of the Indian Evidence Act. On the touch stone of the law laid down by the Hon'ble Supreme Court, the confession of the Co-Accused can, at the best, be used or utilized in order to lend assurance to the Court. In the absence of a substantive evidence, the Court cannot proceed to convict the Accused, Purely on the Statement of Co-Accused."

12.For holding so, the learned Judge relied on the following decisions reported in:-

(i) **2010 (2) MWN (Cr.) 233 (Mohammed Umar @ Mohammed Salim v. Interlligence Officer, Narcotics Control Bureau, South Zonal Unit (Madras),**

(ii) **Crl.A.No.949 of 2018, dated 31.07.2018 (Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence)**
and

(iii) **1952 SCR 526 (Kashmira Singh vs. State of Madhya Pradesh)**



13.The Hon'ble Supreme Court in a very recent decision rendered on **04.09.2019** in **Cr1.A.No.296 of 2014 (Mohammed Fasrin Vs. State)** held that the confession of the co-accused is of no material value in the absence of any other substantive evidence. When other than the confession of statements (one of the co-accused and other of the accused), the prosecution had gathered no evidence to link the accused with the commission of crime. It was held that this evidence was not sufficient to convict the accused.

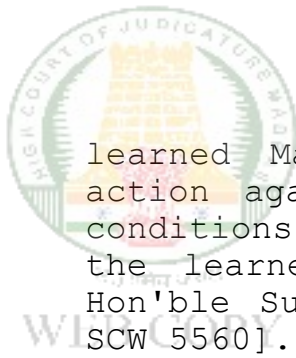
14.Applying the principle laid down above, I can unhesitatingly come to the conclusion that the possibility of the petitioner being convicted is not just bleak but zero. In other words, there is absolutely no possibility of the petitioner being convicted. In fact I would go to the extent of observing that if the petitioner files a quash petition, it will have to be allowed. That being so, the question that arises for my consideration is whether I would be justified in denying bail to the petitioner on the ground that the second limb of the test laid down in Section 37 of NDPS Act, is not satisfied in this case.

15.I hold that the conditions laid down in Section 37 of NDPS Act will have to be read as conjunctive only if there is a *prima facie* case against the accused and where the possibility of conviction is zero, I am of the view that the conditions cannot be read as conjunctive. Therefore, even though I am not in a position to give a finding that the petitioner is not likely to commit any offence while out on bail, still taking note of the fact that other than the confession of co-accused, there is no other material against the petitioner, I am inclined to grant bail to the petitioner. Of course, such an approach can be adopted only after the filing of the final report and the prosecution also admits that there is no other material against the petitioner/accused.

16.In view of the above, I am inclined to enlarge the petitioner on bail with certain conditions. Accordingly, the petitioner is ordered to be released on bail, subject to the following conditions;

(i) 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 Principal Special Court for EC & NDPS Act Cases, Madurai.

(ii) the petitioner is directed to appear before the respondent police as and when required for the interrogation.



(iii) 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].

sd/-
12/12/2019

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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 & NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
THE INSPECTOR OF POLICE,
NIB CID, MADURAI
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.K.PRABHU, Advocate (SR-21726[I] dated 12/12/2019)

ORDER
IN
CRL OP(MD) No.15707 of 2019
Date :12/12/2019

ias
ES/PN/SAR 1/02.01.2020/5P/6C