



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 19/02/2020

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PRESENT

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

CRL OP(MD) . No.2357 of 2020

Karthick

... Petitioner/3rd Accused

Vs

State rep.by
The Inspector of Police,
NIBCID, Theni.
Crime No.15/2019

... Respondent/Complainant

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

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

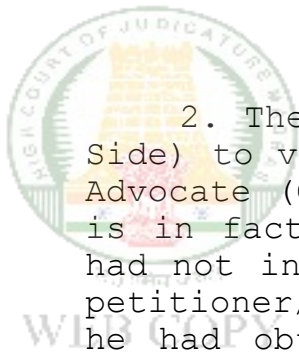
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

for bail in Crime No.15 of 2019 on the file of the respondent police.

ORDER : The Court made the following order :-

This Court vide order dated 11.02.2020 in Crl.O.P.(MD)No.2357 of 2020 had granted bail to Karthick/A3 in Crime No.15 of 2019 on the file of NIBCID, Theni. It was brought to my notice that A2/Naveenkumar was granted bail by another learned Judge of this Court in Crl.O.P.(MD)No.10629 of 2019. I was satisfied that the petitioner/Karthick is on the same footing as that of Naveenkumar/A2 and I proceeded to grant bail. Since it is a case involving commercial quantity and the twin tests laid down in Section 37 NDPS Act will have to be satisfied, I also recorded that the petitioner is not having any previous case under the NDPS Act. Two days ago I received an anonymous letter. In that letter, it has been mentioned that my finding that the petitioner/Karthick is not having previous case was incorrect. It was specifically pointed out that Karthick was found guilty in C.C.No.57 of 2012 on the file of the learned Special Court for EC and NDPS Act Cases, Madurai.



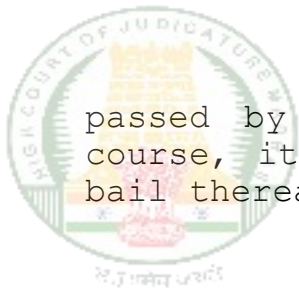
2. Thereupon, I requested the learned Government Advocate (Crl. Side) to verify if this allegation is true. The learned Government Advocate (Crl. Side) informed me yesterday that the said allegation is in fact true. He was also little surprised that NIBCID, Theni had not instructed him properly. But it is now confirmed that the petitioner/Karthick was convicted of an offence under NDPS Act and he had obtained suspension of sentence in Crl.M.P.(MD)No.8334 of 2019 in Crl.A.(MD)No.445 of 2019 on 05.12.2019.

3. Today, when the matter was taken up for hearing, Mr.Jeya Balan, the Sub Inspector of Police, NIBCID, Theni, is present in person. He was the official who had instructed the learned Government Advocate (Crl. Side), when I passed order on 11.02.2020 in Crl.O.P.(MD)No.2357 of 2020. I asked him directly as to why he did not instruct the learned Government Advocate (Crl. Side) about the conviction particulars of the petitioner, Mr.Jeya Balan submitted that when he checked in the CCTNS this information was not available and that he went entirely by the data generated from CCTNS. If that be so, it is a cause for serious concern. It can only mean that data is not being properly fed into CCTNS and it is an unreliable portal. Of course, I make this remark based on the statement made by the Mr.Jeya Balan, the Sub Inspector of Police, NIBCID, Theni. It is for the concerned authority to look into the matter and set right the lacuna.

4. The learned counsel appearing for the petitioner also has responsibility in this case. A counsel filing a bail petition or anticipatory bail petition in a case involving commercial quantity under NDPS Act will have to necessarily get clear and precise instructions about the antecedents of the petitioner. Henceforth in such bail petition or anticipatory bail petition involving commercial quantity, the learned counsel will have to draft with care and responsibility. A para will have to be devoted specifically in this regard. It has to be made clear as to who instructed regarding the antecedents of the petitioner. This will help to fasten responsibility in case the submission turns out to be factually incorrect.

5. Inasmuch as, the order dated 11.02.2020 passed by me in Crl.O.P.(MD)No.2357 of 2020 is based on factually erroneous premises, I have to necessarily recall the same. I am conscious of Section 362 of Cr.P.C., which states that once the Criminal Court passes an order, it cannot be touched unless it is for the purpose of correcting arithmetical or clerical errors. But when the order itself is fundamentally vitiated, I can invoke Section 482 of Cr.P.C., to recall the said order. In this case, I have no hesitation to come to the conclusion that my order is fundamentally vitiated. Therefore, I have to necessarily recall the same. The order dated 11.02.2020 made in Crl.O.P.(MD)No.2357 of 2020 is recalled and the criminal original petition stands dismissed. The

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passed by me. He has to necessarily surrender forthwith. Of course, it is open to the petitioner to file a fresh petition for bail thereafter.

sd/-
19/02/2020

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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 AND NDPS ACT CASES,
MADURAI.
2. THE INSPECTOR OF POLICE,
NIBCID, THENI.
3. THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.2357 of 2020
Date :19/02/2020

MS/PN/SAR-2/20.02.2020/2P.5C