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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 26/11/2020

PRESENT

The Hon'ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.13436 of 2020

Arun

... Petitioner/Accused

Vs

The State Rep. by
The Inspector of Police,
NIB-CID, Madurai City,
Madurai.

Crime No.96 of 2018.

... Respondent/Complainant

For Petitioner : M/s.C.Masilamani,
Advocate.

For Respondent : Mr.Kr.Bharathikannan,
Government Advocate (Crl.Side)

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

PRAYER :-

For Bail in Crime No.96 of 2018 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A4, who was arrested and remanded to judicial custody on 02.10.2018 for the offences punishable under Sections 8(c) r/w.20(b)(ii)(C), 29(1), 27(A) and 25 of NDPS Act on the file of the respondent police seeks bail.

2. The case of the prosecution is that on 02.10.2018 at about 06.45 hrs based on the secret information the respondent police intercepted and searched a car identified by the informant at N.P.Kottai Bye pass road and found five white plastic bags of Ganja weighing about 106 kgs. Further the accused persons also confessed before the complainant that due to their family situation they planned to buy and sell ganja for which they approached one ganja seller and asked him the details where to get ganja at low price in Andhara Pradesh and then the four accused invested a sum of Rs.25000/- each and rented a car bearing Reg. No. KL 29 K 7640 from Suresh Agency and planned to meet broker Raja and paid a sum of Rs.1,00,000/- and got five white plastic bags full of ganja



comprising of 106 kgs and while they were smuggling the same the complainant recovered 20 kg of ganja and one i-phone. Hence the complaint.

3. The learned counsel for the petitioner would submit that there are five accused in this case and the petitioner herein is arrayed as A4. He would also submit that A5 in this case was granted anticipatory bail by this Court and this is the second petition for bail and the earlier petition filed by the petitioner was dismissed by this Court on 13.12.2019 in CrI.O.P(MD) No.17189 of 2020 with a direction to the trial court to complete the trial within a period of six months, but so far trial has not been concluded. He also relied upon the judgment passed by the **Punjab-Haryana High Court in the case of Ankush Kumar @ Sonu -vs- State of Punjab**, wherein it is held as follows :

".....in the recent judgment in case of Nikesh Tarachand Shah (supra) has again reiterated the 11 Judges Bench judgment of the Hon'ble Supreme Court and has categorically held that, it is not the 'object' of the Act or the 'form' and so the language or modality thereof; which is material, rather it is its 'direct effect' of such state instrument, on the right of an individual which is material for the jurisdiction of the Court to grant relief of protection of right of an individual, and has held the provision similar to the one as contained in Section 37(1) (b) (ii) as ultra vires, therefore, this Court being a Constitutional Court, it would not be appropriate for it to put the citizen to legal asphyxia by refusing to entertain his reliance upon the above-said judgment of the Hon'ble Supreme Court, even for the limited purpose of granting bail, which is sought by the petitioner on the ground that his bail is being opposed by the State for the reasons which has direct effect on his fundamental rights and are discriminatory, arbitrary, irrational, unreasonable and unjust and thus violate his right under Article 21 of the Constitution. It is trite law that the Court has to chase the injustice wherever it is found and that in case of conflict between a provision of law and the fundamental right of a citizen, as interpreted by the Hon'ble Supreme Court, it is the fundamental right which has to be given precedent. In view of the above discussion and judgments, it may not be appropriate to tell the petitioner to wait in jail till the constitutional validity is formally considered and decided. The petitioner may separately raise the challenge to the validity of the provisions of Section 37(1) (b) (ii). Therefore, for the limited purpose of considering as to whether the petitioner should be released on bail, it can be considered, whether the



procedure being insisted by the State; for its plea of denying the bail to petitioner; is non-discriminatory, rational, reasonable and fair procedure or not. For this limited purpose of consideration of bail of the petitioner, this Court has considered the aspect of discrimination, arbitrariness, reasonableness and justness of the conditions being insisted upon by the State, and found the same to be discriminatory, irrational and unreasonable and unjust and thus not worth defeating the right of the petitioner to get bail, if otherwise found eligible by a Court"".

He further submitted that the petitioner was arrested and remanded to judicial custody on 02.10.2018 and for the past two years he is judicial custody. He further submitted that absolutely there is no question of conviction and there are satisfactory reason for the case to be ended in acquittal, therefore no useful purpose will be served in keeping the petitioner under custody. Hence he sought for bail.

4. The learned Government Advocate (Crl.Side) would submit there are five accused in this case and the petitioner herein is arrayed as A4. Though this Court directed the trial Court to complete the trial within a period of six months. Due to covid-19 pandemic situation the trial Court is unable to complete the trial within the stipulated time, however the case stands posted for arguments on 30.11.2020. In so far as the case is concerned the petitioner was found in possession of 106kgs of Ganja which falls under the category of commercial quantity. From the petitioner 20 kgs of ganja was recovered. After completion of formalities he was arrested and remanded to judicial custody. He would also submit that the petitioner has not satisfied the twin test as contemplated under Section 37 of the NDPS Act.

5. It is seen that there are five accused in this case and the petitioner herein is arrayed as A4. The petitioner along with other accused were found in possession of 106 of ganja in which the petitioner was found in possession of 20 kgs of ganja, which is a commercial quantity. Though the learned counsel for the petitioner relied upon the judgement of the Punjab- Haryana High Court in the case of **Ankush Kumar @ Sonu -vs- State of Punjab**, the petitioner failed to satisfy this Court to get over other requirements as per Section 37 of the NDPS Act. Hence the judgment relied upon by the learned counsel for the petitioner is not applicable to the present case on hand. That apart the quantity possessed by the petitioner falls under the category of commercial quantity and as such in view of Section 37(ii) of NDPS Act unless and until there is satisfactory and reasonable ground that the petitioner is not guilty of offence and he is not likely to commit any offence while on bail he is not entitled for bail. Further the case stands posted for arguments on 30.11.2020 before the trial Court and also there is a direction in Crl.O.P(MD) No.17189 of 2020 by this Court



to complete the trial within the stipulated time, this Court is not inclined to grant bail to the petitioner.

6. In the result, this petition stand dismissed.

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

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
2. THE INSPECTOR OF POLICE,
NIC-CID, MADURAI CITY,
MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.13436 of 2020
Date :26/11/2020

AAV
TE/JC/SAR-IV : 01/12/2020 : 4P/4C