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

Date : 21/12/2020

PRESENT

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

CRL OP(MD) . No.15368 of 2020

Bergin ... Petitioner/Accused No.5

Vs

The State rep.by
The Inspector of Police,
Kadaiyalumoodu Police Station,
Kanyakumari District.
(Crime No. 114 of 2020).

... Respondent/Complainant

For Petitioner : M/s.A.Mohamed Haneef,
Advocate.

For Respondent : Mr.KR.Bharathi Kannan,
Government Advocate (Crl.Side)

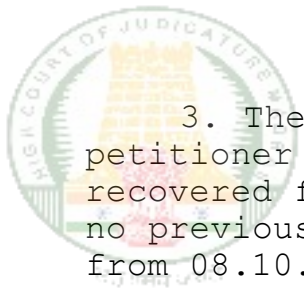
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :- For Bail in Crime No.114 of 2020 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/A5, who was arrested and remanded to judicial custody on 08.10.2020 for the offences punishable under Sections 8(c) r/w.20(b)(ii)(C) and Section 25 of Narcotics Drugs and Psychotropic Substance Act on the file of the respondent police seeks bail.

2. The case of the prosecution is that on receipt of secret information the respondent police along with his team went to Netta Check post at 5.30 pm., on 07.10.2020 and while they were in surveillance, the petitioner along with other accused persons came in motor cycle with the alleged contraband weighing about 28 Kilograms.



3. The learned counsel for the petitioner would submit that the petitioner is falsely implicated in this case and nothing has been recovered from the petitioner herein. He would also submit that the no previous case is pending against the petitioner and he is in jail from 08.10.2020, hence he seeks bail.

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4. The learned Government Advocate (Crl. Side) would submit that there are seven accused in this case and the petitioner herein is arrayed as A5. On receipt of secret information the respondent police along with his team went to Netta Check post at 5.30 pm., on 07.10.2020 and while they were in surveillance the petitioner along with other accused persons came in motor cycle with the alleged contraband weighing about 28 Kilograms, which comes under the category of commercial quantity and this petitioner himself possessed with 10 Kilograms of Ganja. After complying all mandatory provisions registered the First Information Report as against the accused persons and remanded to judicial custody. He further submitted that the respondent police followed the mandatory procedure under Sections 42,50,52A and 57 of the NDPS Act. If the mandatory procedures are not complied with it is a matter for trial and it cannot be considered by this Court that too in the bail petition. That apart, the petitioner was found in possession of Ganja which falls within the commercial quantity and as such, there is no bar under Section 37 of the NDPS Act and does he is not entitled for bail and prayed for dismissal of the petition.

5. It is seen that there are seven accused in this case and the petitioner herein is arrayed as A5. On receipt of secret information the respondent police along with his team went to Netta Check post at 5.30 pm., on 07.10.2020 and while they were in surveillance the petitioner along with other accused persons came in motor cycle with the alleged contraband weighing about 28 Kilograms and the petitioner himself possessed with 10 Kilograms of Ganja. That apart, the respondent police also followed all mandatory procedures laid down under Sections 42,50,52A and 57 of the NDPS Act. Further the contraband possessed by the petitioner falls under the commercial quantity. In the light of Section 37 of the NDPS Act, if the petitioner fails to satisfy the twin test as contemplated under Section 37 of the NDPS Act, the petitioner is not entitled for bail. Hence this Court is not inclined to grant bail to the petitioner.

6. Accordingly, this Criminal Original Petition stands dismissed.

sd/-
21/12/2020

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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 JAIL, PALAYAMKOTTAI.
- 2 THE INSPECTOR OF POLICE,
KADAIYALUMOODU POLICE STATION,
KANYAKUMARI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.15368 of 2020
Date :21/12/2020

Ls
AE/JM/SAR-II (29.12.2020) 3P / 4C