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CRL OP(MD). No.582 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 25/02/2021

Pronounced on: 11/03/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.582 of 2021

Rajasekar

... Petitioner/Accused No.1

Vs

State rep.by,
The Inspector of Police,
Taluk Police Station, Kumbakonam.
Crime No. 696 of 2020.

... Respondent/Complainant

For Petitioner : M/s.Pranesh Rao.P,
Advocate.

For Respondent : Mr.R.Srinivasan,
Government Advocate (Crl.Side)

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

PRAYER :-

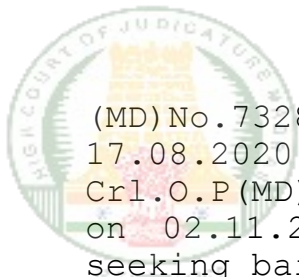
For Bail Crime No.696 of 2020 on the file of the Respondent Police

ORDER : The Court made the following order :-

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

2. The Petitioner/A1, who was arrested and remanded to judicial custody on 19.05.2020, for the offences punishable under Sections 8 (c), 22(c) of the NDPS Act, 1985, in Crime No.696 of 2020, on the file of the respondent Police, seeks bail.

3.The petitioner / A1 has filed this bail application, which is
<https://hcs.judges386.hcs.gov.in/hcs/judges386> application. Earlier, the petitioner had moved Crl.O.P



(MD)No.7328 of 2020 and the same was dismissed by this Court on 17.08.2020. Thereafter, the 2nd bail application was filed in CrI.O.P(MD)No.12159 of 2020 and the same was dismissed as withdrawn on 02.11.2020. Thereafter the present bail petition is filed, seeking bail to the petitioner.

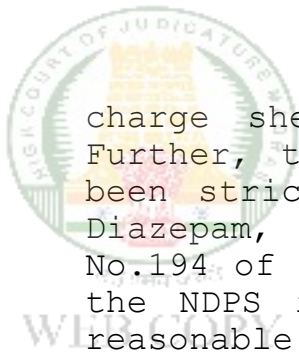
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4. The gist of the case is that the respondent received secret information on 19.05.2020 at about 5.00 a.m., about smuggling of psychotropic substance. The same was recorded in the general diary at 5.10 hrs. The respondent along with the informant had gone to the scene of occurrence and keeping watch over the place. At that time, they found the petitioner along with another accused had come there. The petitioner was carrying a yellow bag. They were stopped and enquired. They gave contradictory statements. Thereafter, they were informed about their rights to be searched in the presence of Magistrate or a Gazetted Officer. The petitioner and other accused agreed to be searched by the respondent themselves and after complying Section 50, they were searched. The petitioner, who carried yellow bag found to contain Diazepam 500 grams. Contents were weighed, samples were taken and thereafter, they were produced before the Inspector of Police with contraband. The petitioners and other accused were arrested and given a confession admitting the guilt. Thereafter, they were produced before the learned Judicial Magistrate, for remand. The Mahazar for seizure of the contraband was prepared in the scene of occurrence. The 57 Report was sent to the higher officials. The contraband was sent to the Chemical Analysis. After getting Chemical Analysis Report, investigation completed, now charge sheet has been filed, which was taken on file in C.C.No.30 of 2020, on 22.10.2020.

5. The contention of the learned counsel for the petitioner is that the complainant in this case is none other than the respondent police themselves, who had registered the complaint and proceeded for investigation. The search and seizure were conducted in a public place and the witnesses for the same are all official witnesses and no public witnesses were examined. The Inspector of Police has recorded the complaint at 6.30 hrs. The respondent Police in his report under Section 57 of NDPS Act, mentioned that the accused and the contraband were produced in the Police Station at about 7.30 a.m., on the contrary, the time of registration of the case has been mentioned as 9.00 a.m., which is highly contradictory. On this sole ground alone it would be proved that the FIR is false and the petitioner is to be released on bail. Further, the petitioner is ready to cooperate with the investigation. The learned counsel further submitted that the petitioner is in confinement for more than 233 days and he is eligible for statutory bail. Further, statutory provisions had not been followed in this case.

6. The learned Additional Public Prosecutor filed a counter and submitted that in this case investigation has been completed and

<https://hccourtorg.in/services>



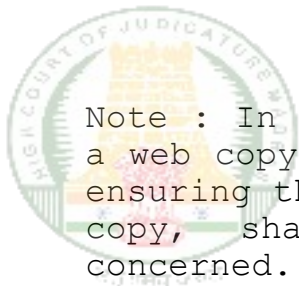
charge sheet filed on 22.10.2020, within the statutory period. Further, the provision under Sections 42, 50, 57 of NDPS Act has been strictly followed and the contraband seized is 500 grams of Diazepam, which is notified as commercial quantity, as per Serial No.194 of the table mentioned in the NDPS Act. The Section 37 of the NDPS is clearly a bar for granting bail, unless there is a reasonable ground for believing that the petitioner / accused is not guilty of the offence he is charged with and further that he is not likely to commit an offence under the said Act while on bail and this twin conditions has not been satisfied by the petitioner. It is his further submission that the petitioner is a History Sheeted Rowdy with H.S.No.360 of 2016 and he has got two cases pending against him in Crime No.506 of 2016 and Crime No.235 of 2016. The petitioner had committed a heinous offence. Further, in this case, investigation has been completed and charge sheet has been filed. The points raised by the petitioner are to be raised during trial and hence, opposed the grant of bail to the petitioner.

7. Considering the rival submission and on perusal of the materials it is seen that the petitioner was arrested on 19.05.2020 and investigation has been completed and final report filed on 13.10.2020, which was taken on file on 22.10.2020. In the final report, L.Ws.1 to 9 are listed as witness along with the documents, including the Forensic Report. From the Forensic Report it is seen that from the contraband viz., Diazepam has been detected and proved. L.Ws.1 to 3 are the witnesses, who had gone to the scene of occurrence found the petitioner carrying the yellow bag. On search, the psychotropic substances viz., Diazepam was found and seized from the petitioner and the seizure and recovery had been made in the scene of occurrence with contemporaneous document. Thereafter, the chemical Analyst / L.W.8 by his report dated 30.09.2020 had clearly proved that the contraband is the Diazepam and the contraband seized is of commercial quantity. Further, in this case, the investigation completed, charge sheet has been filed and taken on file in C.C.No.30 of 2020. The petitioner has not made out a case for bail. The petitioner has not satisfied this Court by reasonable grounds discharging the statutory presumption under Section 37 of NDPS Act. Further, there is no change of circumstances after earlier dismissal. In view of the same, this Court is not inclined to grant bail to the petitioner. Hence, this Criminal Original Petition is dismissed.

sd/-
11/03/2021

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/ /2021
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.

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- TO
- 1 THE INSPECTOR OF POLICE
TALUK POLICE STATION,
KUMBAKONAM.
 - 2 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
 - 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +3 CC to M/S.P.PRANESH RAO, Advocate SR.No.10259

ORDER
IN
CRL OP(MD) No.582 of 2021
Date :11/03/2021

NR/VR/SAR-IV(12.03.2021) 4P:7C