



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Orders Reserved on : 05/03/2021

Pronounced on : 16/03/2021

PRESENT

The Hon'ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) . No.1989 of 2021

Sudhakaran

... Petitioner / 9th Accused

Vs.

The State through
The Inspector of Police,
Muthukulathur Police Station,
Ramanathapuram District
In Crime No.613 of 2020

... Respondent/Complainant

For Petitioner : Mr.M.Gurudas

For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

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

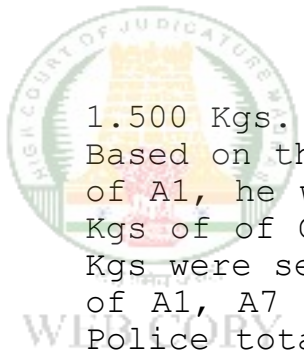
PRAYER :-

For Bail in Crime No.613 of 2020 on the file of the Respondent police.

ORDER : The Court made the following order :-

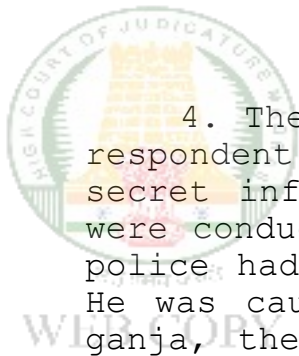
The petitioner/A9, who was arrested and remanded to judicial custody on 04.12.2020, for the offences punishable under Sections 8(c) r/w.20(b)(ii)(c), 25, 27A, 29(1) of Narcotic Drugs Psychotic Substances Act, 1985 and Section 20 of Arms Act, 1959, in Crime No.613 of 2020, on the file of the respondent police, seeks bail.

2. The gist of the prosecution case is that the respondent, on receipt of secret information, went to the scene of occurrence on 04.12.2020 at about 10.00 hrs and were conducting the vehicle check, at that time, A2 in this case came in a bike, when respondent attempted to stop him, he through away the bag in the bushes, attempted to escape, he was caught and the bag from the bush was retrieved. On examination, it was identified as ganga, weighing



1.500 Kgs. A2 gave a confession leading to arrest of other accused. Based on the confession, the respondent police had gone to the house of A1, he was not there, the house was searched, from there 23.500 Kgs of Ganja in 4 pockets of each 5 kgs and one 1 packet of 3.5 Kgs were seized and also three long sword and a spear. In the house of A1, A7 to A9 were there and they were arrested. The respondent Police totally seized 25 Kgs of Ganja in this case, which was kept for sale and it is a commercial quantity, samples were taken and sent to Forensic study, accused were produced and remanded and property were also produced before the lower Court. A7 in this case, who has got notoriety was detained on 26.01.2021, under Goondas Act.

3. The learned counsel appearing for the petitioner submitted that the petitioner has been arrested in this case on a wrong premise as though the petitioner had conspiracy with other accused in smuggling and selling ganja. The petitioner is A9 in this case. The petitioner has been arrested on the basis of the confession of the co-accused Kaleeswawran. Other than this, there is no other material against the petitioner. From the petitioner, nothing was recovered. The only circumstances against the petitioner is that the co-accused Kaleeswaran in his confession had mentioned the name of petitioner. The confession though has been recorded in a Public place, no public witness was examined and the confession was recorded in presence of two police constables. Further, the confession itself is highly doubtful for the reason that the confession is said to have been recorded on 04.12.2021 at Solai Meenal College at Muthukulathoor between 11.15 and 13.15 hrs., in the latter part of the confession, he narrates about the incident at 15.00 hrs at Abiramam, which is highly artificial. The confession states about something in future. In this case, the petitioner is an engineering graduate, who is the sole breadwinner of the family. Further, from the year 2016 onwards, he has been taking treatment for his Kidney ailment. Earlier, he met with an accident and sustained serious injuries and medical report shows that he has serious health impediments. Further, the petitioner taken treatment for Kidney problem in the Government Hospital, Aruppukottai and on examination, he was referred to Government Hospital, Madurai. The petitioner's Pottasium level is in such a bad situation that at any time he would sleep away to death. Further, after the arrest of the petitioner, his health condition further deteriorated. The petitioner is daily facing radiating pain on the lower part of the body and he is unable to sit in one position and he is rolling on the floor due to severe abdomen pain. In fact, the petitioner has been daily referred to the hospital and the hospital records would prove the same. The petitioner is not involved in any other case and no recovery has been made from him. Hence, the learned counsel for the petitioner seeks bail in favour of the petitioner.



4. The learned Government Advocate (crl.side) appearing for the respondent Police, on instructions, submitted that in this case, secret information was received by the respondent police and they were conducting road check. A2 was riding a bike, on seeing the police had thrown away the bag into bushes and attempted to flee. He was caught, on enquiry it was found that the thrown object is ganja, the same was retrieved and further he had given confession that he purchased the Ganja from A1. On his confession, A1's house was searched and from there, 23.5 Kgs of Ganja was seized. The petitioner was present in the house of A1. The petitioner was unable to give any reason for his presence. Apart from Ganja, long sword and spear, which are deadly weapons, were seized. The accused are all part of a Gang indulging smuggling of ganja, thereby, targeting the school and college students and thereby, destroying their entire future. In this case, A7 had been detained under Goonds Act; A1 is still absconding. There are totally 9 accused in this case. A2, A7, A8 and A9 were arrested. A1, A3, A4, A5 and A6 are still absconding. Totally, in this case 25 kgs of Ganja had been seized, which is of commercial quantity. In this case, all the statutory provisions has been complied with. Hence, prayed for dismissal of the bail petition filed by the petitioner.

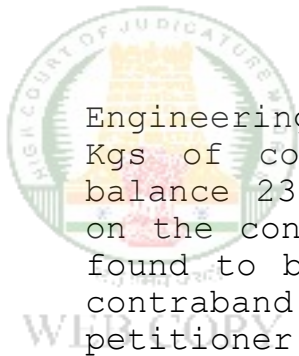
5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. It is seen from the records that the health condition of the petitioner is in pathetic situation. The medical report has been received and from the medical report it is seen that the petitioner has been daily sent to the Government Hospital, Ramanathapuram, for treatment for his Kidney problem. He is a chronic Kidney patient. Dr.R.kalaiyarasu, a Senior Civil Sergeant of Government Headquarters Hospital, Ramanathapuram, opined that the petitioner needs minimum medical treatment at a high grade hospital viz., Madurai Medical College Hospital. Further, the scan report viz., Ultrasonography of the Abdomen report produced by the petitioner, it has been stated as follows:-

"Right Kidney : 113 x 53 mms in size. Left Kidney : 113 x 57 mms in size. Both kidneys are enlarged in size with regular cortical outline. Cortical parenchymal thickness is increased with mild increase in cortical echogenicity - Grade-I medical renal disease. No e/o calculi / hydronephrosis in both kidneys. Both ureters are not dilated. No focal renal mass lesions / pyleonephritic focus. Renal artery doppler study at intra renal level shows elevated R/I value indicating the possibility of medical renal disease of interstitial pathology please.

Impression : Renomegaly with features of acute nephritis for further clinical co-relation please."

7. Considering the rival submissions and on perusal of the medical report, it is seen that the petitioner is arrayed as A9, he is an



Engineering Graduate, the petitioner has got no bad antecedents, 1.5 Kgs of contraband viz., Ganja had been seized from A2 and the balance 23.5 Kgs of contraband has been seized in the house of A1, on the confession of A2, the petitioner along with two others were found to be near the house of A1 and admittedly, in this case, no contraband has been seized from the petitioner. Further, the petitioner's health condition is of great concern from the year 2016 onwards, he has been taking treatment for his kidney problem, now almost daily from the prison, he is referred to the Government Hospital, Ramanathapuram, the medical record shows that the petitioner had been complaining radiating pain, his health condition is continues to deteriorate day by day. Hence, this Court is inclined to grant bail to the petitioner, subject to certain conditions;

8. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two blood related sureties each for a like sum to the satisfaction of the learned Special Sessions Judge for the trial of NDPS Cases at Pudukottai.

i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity.

ii) the petitioner shall report before the respondent police weekly once ie., on every Sunday at .10.30 a.m., until further orders.

iii) the petitioner shall not tamper with evidence or witness.

iv) the petitioner shall not abscond during trial.

v) 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].

vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
16/03/2021

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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.

TO

- 1 THE SPECIAL SESSIONS JUDGE
FOR THE TRIAL OF NDPS CASES,
PUDUKOTTAI.
- 2 THE INSPECTOR OF POLICE,
MUTHUKULATHUR POLICE STATION,
RAMANATHAPURAM DISTRICT.
- 3 THE OFFICER INCHARGE,
DISTRICT PRISON,
RAMANATHAPURAM.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL OP(MD) No.1989 of 2021

Date :16/03/2021

MPK

TE/JC/SAR-IV : 18/03/2021 : 5P/5C