



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 30/04/2021

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PRESENT

The Hon`ble **Mr.Justice G.CHANDRASEKHARAN**

CRL OP(MD) . No.6191 of 2021

Rajasekar @ Kuruvi Sekar

... Petitioner/1st Accused

Vs

The State Represented by its
The Inspector of Police,
Kumbakonam Taluk Police Station,
Thanjavur District.
Crime No. 696/2020.

... Respondent/Complainant

For Petitioner : Mr.M.S.Jeyakarthik,
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. 696/2020 on the file of the respondent Police

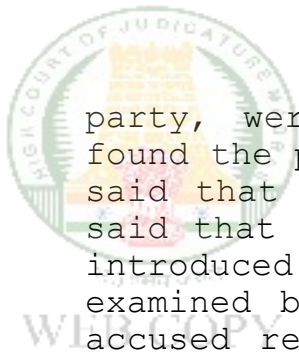
ORDER : The Court made the following order :-

The petitioner/accused no.1, who was arrested on 19.05.2020 for the offence punishable under Sections 8(C) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.696 of 2020 on the file of the respondent police, seeks bail.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side).

3.It is seen from the submissions made that on 19.05.2020 at about 05.00 a.m., when the defacto complainant along with police

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party, were engaged crime prevention near Mani Nagar Arch, they found the persons with one Yellow bag. On enquiry, the first person said that his name is Kuruvi sekar @ Rajasekar and another person said that his name is Siva. The defacto complainant and his party introduced themselves to them and also informed all the rights to be examined before the Judicial Magistrate or Gazetted Officer. The accused replied that it is not necessary to take them before the Judicial Magistrate or Gazetted Officer. The accused gave consent for search by the defacto complainant and his party themselves. On search of the bag, it was found with diazepam powder weighing 500 gms, which is white in colour. The respondent police seized the contraband and registered a case against the accused.

4.The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that the police have not properly complied with the mandatory provisions provided under Sections 42 and 50 of the NDPS Act. There are discrepancies in the time and date of arrest of the accused in seizure mahazer, confession statement and in the FIR. Therefore, he seeks release of the petitioner on bail.

5.It is seen from the counter affidavit filed by the respondent that the defacto complainant is shown as the Investigating Officer and he is the complainant in this case. Therefore, he cannot investigate in this case.

6.The learned Government Advocate(Crl.Side) appearing for the respondent opposes this petition on the ground that the trial is yet to be commenced and therefore, if the petitioner is granted bail and absconds at this stage, the trial could not be commenced. The petitioner is involved in illegal possession of 500 gms of Diazepam, as per the Entry No.194 of the NDPS Act, 1985. This is a commercial quantity. In case of commercial quantity, the petitioner has to satisfy the conditions contemplated under Section 37 of the NPDS Act to grant bail ie., there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

7.The allegation with regard to the non compliance of the mandatory provisions under Sections 42 and 50 of the NDPS Act and other discrepancies found in the search records are the matters to be considered at the time of trial and not while considering the bail petition.

8.Considering the facts and circumstances of the case and the fact that the petitioner was found to be a possession of commercial quantity of Diazepam and the fact that the petitioner has not satisfied the twin conditions prescribed under Section 37 of the NDPS Act, the Court is not inclined to grant bail to the



petitioner.
dismissed.

Accordingly, this Criminal Original Petition is

sd/-
30/04/2021

/ TRUE COPY /

/ /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 SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
2. THE INSPECTOR OF POLICE,
KUMBAKONAM TALUK POLICE STATION,
THANJAVUR DISTRICT.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.6191 of 2021
Date : 30/04/2021

SM
AE/VR/SAR-I/21.05.2021/3P/4C