



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

Date : 11/06/2021

PRESENT

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The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD) . No.7261 of 2021

N.Johnson

... Petitioner/1st Accused

Vs

State rep.by
The Intelligence Officer,
Narcotics Control Bureau,
Sub Zone, Madurai
(F.No.48/1/01/2021/NCB/MDU) .

... Respondent/Complainant

For Petitioner : Mr.T.Selvan,
Advocate.

For Respondent : Mr.C.Arulvadivel @ Sekar,
Special Public Prosecutor

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

PRAYER :-To enlarge the petitioner on bail in connection with
F.No.48/1/01/2021/NCB/MDU on the file of the respondent.

ORDER : The Court made the following order :-

The petitioner/A1 was arrested and remanded to judicial custody on 06.02.2021, for the alleged offence punishable under Sections 8(c) r/w 20(b)(ii)(C), 28 and 29 of NDPS Act in F.No.48/1/01/2021/NCB/MDU, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioner was arrested on 06.02.2021 for the alleged possession of 9.140 kgs of Hashish oil. Based on the confession statement of the co-accused, 16.950 kgs of Hashish oil was recovered from one R.Bistis. Therefore, the case came to be registered.

3.The learned counsel for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would further submit that the petitioner is working as a coolie in Thoothukudi harbour and he is suffering from lumber spondylosis and kidney problems and he is in judicial custody for more than 120 days. Therefore, he seeks bail to the petitioner.



4.The learned Special Public Prosecutor appearing for the respondent strongly opposed this petition on the ground that so far 26.090 kgs of Hashish oil was seized from the accused in this case. There is one accused, namely, Prasanth, who is a Supplier and he belongs to Chennai. He is not yet secured and there are three more persons also involved in this case. Their identity is also being traced. Investigation in this case is not completed. More than 1 kg of Hashish oil, comes under the category of commercial quantity. There is a bar to grant bail under Section 37 of the NDPS Act. Only if the conditions under Section 37 of the Act is satisfied, the accused is entitled for grant of bail. In this case, the conditions stipulated under Section 37 of the NDPS Act is not satisfied and therefore, he seeks dismissal of this petition.

5.A perusal of sub-clause (viia) and (xxiia) of Section 2 of the NDPS Act shows that Charas, Hashish Extracts and Tinctures of Cannabis of 1 kg and above comes under the category of commercial quantity. Section 37 of the NDPS Act comes into operation, when the bail petition filed comes under the commercial quantity of the Narcotic Drugs and Psychotropic Substances. The petitioner has not satisfied the twin conditions for granting anticipatory bail under Section 37 of the NDPS Act ie., there are reasonable grounds for believing that they are not guilty of such offence and that they are not likely to commit any offence while on bail. Apparently, 26.090 kgs of Hashish oil was seized in this case. More particularly, 9.140 kgs of Hashish oil was seized from this petitioner, which amounts to commercial quantity. Therefore, the petitioner cannot say that he established that there are reasonable grounds for believing that he is not guilty of such offence. Obviously, we cannot give a guaranty and that the petitioner is not guilty to commit any offence while on bail. Therefore, this Court is of the considered view, the petitioner fails to satisfy both the conditions stipulated under Section 37 of the NDPS Act and he is not entitled to grant on bail. Not only that, it is seen from the submissions of the learned Special Public Prosecutor that the investigation in this case is pending, the involvement of the other accused is being investigated and the prime accused, Prasanth, who is a Supplier, is still absconding.

6.Taking all these facts and circumstances of the case, this Court is of the considered view, the petitioner is not entitled for bail.

7.In this view of the matter, this Criminal Original Petition is dismissed.

sd/-
11/06/2021

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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 SUPERINTENDENT,
CENTRAL JAIL, MADURAI.
 - 2 THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU,
SUB ZONE, MADURAI.
 3. THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.7261 of 2021
Date :11/06/2021

SJI
AE/PN/SAR-1/18.06.2021/3P/4C