



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

Dated: 22/12/2021
PRESENT

WEB COPY

The Hon'ble Mr.Justice G.ILANGO VAN

Crl.OP(MD)Nos.7736 and 8401 of 2021

Vetrivelmurugan

...Petitioner/Accused No.6
IN CRL OP(MD)No.7736 of 2021

Balamurali @ Ovayan Balamurali

...Petitioner/Accused No.5
IN CRL OP(MD)No.8401 of 2021

-Vs-

State Rep. By
Inspector of Police,
Koodalpudur Police Station,
Madurai City,
(Crime No.1388 of 2020)

...Respondent/Complainant
IN BOTH PETITIONS

For Petitioner : Mr.B.Sudha Sathanath, Advocate

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

PETITION FOR ANTICIPATORY BAIL under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in Crime No.1388 of 2020 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioners, who are arrayed as A5 and A6 apprehending arrest at the hands of the respondent police for the offences punishable under sections 8(c), r/w 20(b)(ii)(C) of NDPS Act, in Crime No.1388 of 2020 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that on 05/09/2021 at about 2.45 pm, the police party was on a routine check up, at that time, at about 3.00 am, at Amman Nagar, Anaiyur village, on seeing the police party the accused were trying to escape from the spot and on interception, they were found 22 kgs of ganja in the possession of the accused persons.

3.Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the State.



4. Reading of the FIR shows that on 05/09/2021 at about 2.45 pm, the police party was on a routine check up, at that time at about 3.00 am, near the house of Pradeep @ Pragatheeswaran namely A1 herein about 15 persons gathered and they were making pockets and on seeing the police party, all the accused persons tried to escape and from the place of occurrence, three persons were arrested and others escaped from the place. On enquiry, A1 has informed that they purchased the contraband in bulk from Andhra Pradesh and brought the same to the place of occurrence and dividing the same for selling. So totally 21.800 kgs of ganja has been seized and further proceedings have been initiated.

5. The learned counsel appearing for the petitioners/A5 and A6 would submit that except the confession statement of the co-accused, no other materials are collected to show the involvement of this petitioner in the above said crime.

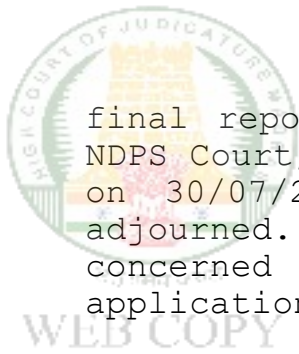
6. The entire perusal of the records that earlier bail application that has been filed by the petitioners came to be dismissed by this court on 30/04/2021 in Crl.OP(MD)Nos.3036 and 4094 of 2021 on the ground that twin conditions of section 37 of the NDPS Act has not been complied with. Now this is the second bail application.

7. The earlier bail applications have been dismissed on the ground that twin conditions under section 37 of the NDPS Act has not been complied and considering the fact that 22 kgs of ganja has been seized or recovered from the accused persons from the place of occurrence.

8. Now the learned counsel appearing for the petitioners would submit that in a patch of petition viz., Crl.OP(MD)No.1607 of 2021 etc., an elaborate discussion has been made with regard to the manner in which these cases have been filed against the accused persons, more specifically in para 27 and 39, when this court has observed that if the prosecution is not in a position to collect the materials to corroborate or substantiate the confession of the co-accused, those bail application can be considered on that ground.

9. Now no doubt that whether confession statement of the co-accused will come under the category of fact discovery under section 27 of the Indian Evidence Act, is a matter for consideration by the trial court. Now it appears that the matter is pending before the larger Bench of the Hon'ble Supreme Court.

10. Now be that as it may, the allegation against these petitioners is that they are found in possession of contraband in the place of occurrence and these petitioners were tried to escape from the place of occurrence. Now the investigation is also over and



final report has also been filed in CC No.120 of 2021 before the NDPS Court, Madurai. Now the next hearing date was originally fixed on 30/07/2021 and thereafter, it appears that the matter kept adjourned. Since the final report has been filed before the concerned court, the petitioners can very well move the bail application before the concerned court seeking bail.

11. So far as this court is concerned, since in earlier bail application elaborate discussion has been made by this court, I find absolutely no change of circumstances, except the above observation that has been made by this court, in the above said batch of petitions. In the event of moving such application before the Special Court for NDPS cases, the same may be considered by the court concerned on merits, without being influenced by the observation made by this court.

12. In the result, both the criminal original petitions are **dismissed**.

sd/-
22/12/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE INSPECTOR OF POLICE
KODALPUDUR POLICE STATION,
MADURAI CITY.
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP (MD) Nos.7736 &
8401 of 2021
Date : 22/12/2021

PKP/JM/SAR-1/29.12.2021/3P/3C