



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

Date : 01/07/2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD). No.8649 of 2021

Madhankumar ... Petitioner/Accused No.3

Vs

State Rep.by
The Inspector of Police,
Woraiyur Police Station,
Tiruchirappalli District.
Crime No.400 of 2021.

... Respondent/Complainant

For Petitioner : Mr.B.Jameel Arasu,
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

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

PRAYER :- For Bail in Crime No.400 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A3, who was arrested on 30.05.2021 for the offences punishable under Section 8(c)r/w.20(b)(ii)(C) of NDPS Act in Crime No.400 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the defacto complainant got secret information with regard to the illegal possession of ganja by the accused persons namely Hariharan, Govindarajan and Madhankumar. After intimating the same to the higher officials his team along with police party proceeded towards Aadhi Nagar Mathan house and secretly watching that place. At about 14.15 hrs near the house of Madhan, three person were standing and they have been identified by the informant. On seeing the police two persons escaped from there leaving two sacks possessed by them. The police apprehended Hariharan and on enquiry it was revealed that the persons who accompanied him are Madhankumar and Govindaraj. Hariharan was informed his right to be searched in the presence of Judicial Magistrate or Gazette Officer. Hariharan expresses his willingness for search by the police themselves. Then search was



conducted in the sacks possessed by him. It is seen from the statement that he along with other accused used to get ganja and used to sell in small quantity. Three sacks were searched and each sack contained 7kg of ganja. After following all the mandatory procedures the accused was arrested and the case has been registered.

3. The learned counsel for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. Even as per the submission made in the First Information Report no recovery was made from the petitioner. Even assuming that the bag contains 7kgs of ganja it does not fall under the category of commercial quantity. He would further submit that the petitioner is in custody from 30.05.2021, hence he seeks bail

4. The learned Additional Public Prosecutor opposed this petition on the ground that it is a case of commercial quantity. As indicated above only one accused Hariharan was apprehended at the spot on 28.05.2021 and on the confession statement other accused were implicated as accused.

5. The main submission of the learned counsel for the petitioner is that there is no recovery from the petitioner and even assuming that only 7kgs of ganja was found in a sack alleged to have been possessed by the him and therefore it is not a case of commercial quantity. The respondent police on secret information from the informant that all the accused persons together were involved in illegal possession of ganja found three persons independently possessing ganja and each bag contained 7kgs of ganja and the case came to be registered. Though the learned counsel for the petitioner submitted that petitioners were in possession of 7kg of ganja each, which is below the commercial quantity, the said submission cannot be countenanced for the reason that the respondent police has seized 21 kg of ganja during the course of same transaction. The case was registered only on 28.05.2021 and the investigation is at the preliminary stage. Put together the accused in this case were in possession of 21kgs of ganja which is a commercial quantity.

6. Grant of bail with regard to illegal possession of commercial quantity of ganja is governed by Section 37 of Narcotic Drugs and Psychotropic Substances. Only if the accused satisfies the Court that there are reasonable grounds for believing that the accused is not guilty of such offences and that he is not likely to commit any offence while on bail, the accused is entitled for bail. There is *prima facie* case for prosecuting the petitioner along with other accused for possessing 21 kgs of ganja. The petitioner has not satisfied the twin conditions as laid down under Section 37 of the NDPS Act, hence this Court is not inclined to grant bail to the petitioner.



7. In the result, the petition stands dismissed.

sd/-
01/07/2021

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WEB 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 INSPECTOR OF POLICE,
WORAIYUR POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
- 2 THE SUPERINTENDENT, CENTRAL PRISON,
TRICHY.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.8649 of 2021
Date : 01/07/2021

AAV
MS/VR/SAR-2/06.07.2021/3P.4C