



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 13/08/2021

PRESENT

WEB COPY

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD) . No.9998 of 2021

R.Sakthivel

... Petitioner/4th Accused

Vs

The State rep.by,
The Inspector of Police,
Athoor Police Station,
Thoothukudi District.
Crime No.137/2019.

... Respondent/Complainant

For Petitioner : Mr.J.Devasenar, Advocate.

For Respondent : Mr.Antony Sahaya Prabakar,
Government Advocate (Crl.Side)

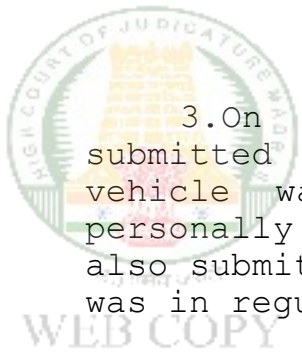
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :- For Bail in Crime No.137/2019 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner is figuring as an accused in Crime No.137 of 2019 registered on the file of the Inspector of Police, Athur Police Station, Tuticorin District for the offences under Sections 8(c), 20 (b)(ii)(C), 29(1) and 25 of the NDPS Act, 1985. The case was registered on 21.08.2019. Final Report has been filed and it was also taken on file in C.C.No.97 of 2020 on the file of the Special Court for NDPS Cases, Madurai on 23.03.2020. When the petitioner earlier filed Crl.OP.(MD).No.5306 of 2020, the same was dismissed by this Court on 31.08.2020 with certain directions.

2.The case involves seizure of 294 kgs of Ganja. When the police personnel attached to the respondent police station were on their usual rounds on 21.08.2019 at about 3.00 p.m at Athoor to Seranthapoomangalam Road near V.V.Mineral Company, they intercepted a vehicle (TATA Ace) bearing Reg.No.TN04-K-4726 and found the contraband hidden therein. There is no dispute that the vehicle belongs to the petitioner herein and one Manikandan. Since commercial quantity of Ganja is involved, the petitioner has to necessarily satisfy the conditions set out in Section 37 of the NDPS Act.



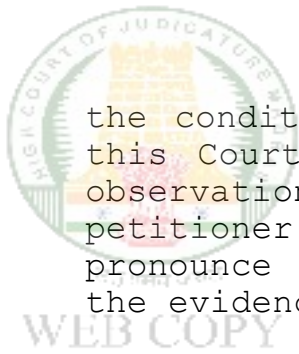
3. On the last occasion, the learned Government counsel submitted that the petitioner had given a confession that the vehicle was hired by A5/Ravi and A9/Lakshmanan and that he personally accompanied them in the vehicle up to Tuticorin. It was also submitted that the call data details reveal that the petitioner was in regular touch with A5/Ravi.

4. In view of the said submission, I came to the conclusion that I am not in a position to give any finding that the petitioner is not guilty of the offence in question. It was submitted that two absconding accused are the key-persons behind the entire crime. Pursuant to the direction given by this Court, the Investigation Officer filed a petition for conducting further investigation and the same was also allowed. But, till date, no supplementary charge sheet has been filed.

5. In these circumstances, the petitioner has come out with this bail petition seeking grant of Bail. The petitioner was arrested and remanded to custody as early as on 27.08.2019. Almost two years are going to be over. I called upon the Investigation Officer to file counter affidavit indicating the circumstances which implicate the petitioner in the crime.

6. The learned Government Advocate submitted that the petitioner's partner Thiru.Manikandan had given a statement under Section 161 of Cr.P.C., stating that the vehicle in question belongs to the petitioner and himself and that it was given to A5 and that the petitioner had accompanied A5. This statement by itself does not indicate that the petitioner was aware that in the vehicle in question contraband was carried. Apart from the confession given by the petitioner, there is no other material to implicate the petitioner. Earlier, the prosecution submitted before me that the call data details would reveal that the petitioner was in contact with A5/Ravi. It is now admitted by the investigation officer that the petitioner's mobile phone was not seized and the call data details have not been obtained so far. Therefore, the earlier statement made before me seems to be incorrect. I have to necessarily come to the conclusion that as of now, there is no material to link the petitioner with the crime in question. Therefore, I have to necessarily render a finding that the petitioner is not likely to have committed the offence in question.

7. Of course, the petitioner has to cross yet another hurdle. I have to give a finding that the petitioner is not likely to commit any offence after he comes out on bail. If the petitioner is having any previous case of similar nature, this Court cannot give such a finding. It is asserted by the petitioner's counsel that even a petty case has not been registered against the petitioner. Except the case on hand, the petitioner has not come under any adverse notice of the prosecution in any manner. Therefore, the petitioner



the conditions laid down in Section 37 of NDPS Act are fulfilled, this Court is inclined to grant bail. I make it clear that the observation made herein cannot enure to the advantage of the petitioner when the trial is conducted. The trial Court will pronounce on the guilt or innocence of the petitioner entirely on the evidence adduced before it.

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 sureties each for a like sum to the satisfaction of the learned Principal Special Court for EC and NDPS Act Cases, Madurai and on further conditions that:-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial judge may obtain a copy of Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall appear before the Inspector of Police, Vedaranyam Police Station, daily at 10.30 a.m., until further orders.

[c] On breach of any of the aforesaid conditions, the learned 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 Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

sd/-

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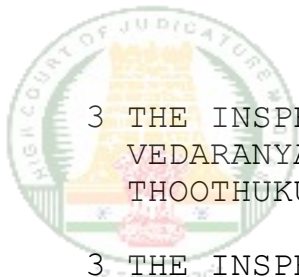
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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 PRINCIPAL SPECIAL COURT FOR EC AND NDPS ACT CASES,
MADURAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.



3 THE INSPECTOR OF POLICE,
VEDARANYAM POLICE STATION,
THOOTHUKUDI DISTRICT.

3 THE INSPECTOR OF POLICE,
ATHOOR POLICE STATION,
THOOTHUKUDI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to MR.J.DEVASENAN, Advocate SR.No.26342.

ORDER

IN

CRL OP(MD) No.9998 of 2021

Date :13/08/2021

SKM

MK/PN/SAR.II/18.08.2021/4P/7C