



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 22/10/2021

PRESENT

WEB COPY

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

CRL OP(MD). No.15066 of 2021

Saro

... Petitioner/Accused No.4

Vs

The State rep.by,
The Inspector of Police,
Aathoor Police Station,
Tuticorin District.
In Crime No.137/2019.

... Respondent/Complainant

For Petitioner : Mr.G.Prabhu Rajadurai, Advocate.
for Mr.K.Suyambulinga Bharathi, Advocate.
For Respondent : Mr.Antony Sahaya Prabahar,
Additional Public Prosecutor

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

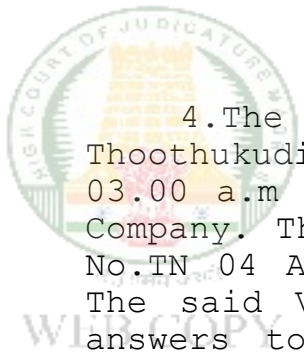
PRAYER :-For Bail in Crime No.137 of 2019 on the file of the
respondent Police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the
learned Government Advocate (Crl. Side) appearing for the
respondent.

2.The petitioner was arrested by the respondent on 28.08.2019
for the offences under Sections 8(c) r/w. 20(b), (ii) B, 29(1) and
25 of the NDPS Act, 1985 in Crime No.137 of 2019 on the file of the
respondent police.

3.The petitioner's earlier bail petitions were dismissed by this
Court on the ground that the parameters set out under Section 37 of
the NDPS Act have not been fulfilled. The petitioner has filed this
bail petition by citing change of circumstances. The learned counsel
for the petitioner would state that some of the co-accused who are
placed on the same footing have been granted bail by this Court. The
learned counsel invokes doctrine of parity. Per contra, the learned
Government counsel submits that the case of the petitioner is not on
the same footing.



4.The Police personnel attached to Athoor Police Station, Thoothukudi District, were on their rounds on 21.08.2020 at about 03.00 a.m at Authoor - Serunthapoomangalam Road, near V.V.Minerals Company. They intercepted the vehicle TATA ACE bearing Registration No.TN 04 AK 4762. It was driven by A1-Venkatachalam @ Venkatesan. The said Venkatachalam @ Venkatesan-A1 did not give satisfactory answers to the questions posed by the Police. A search of the vehicle led to the discovery of the contraband which was hidden beneath empty liquor bottles. The contraband was hidden in 12 polythene sacks. The contraband is said to be worth Rs.29,40,000/- in the illegal market. A1 is said to have confessed that he had undertaken the task of transporting the contraband from Mukkanai Roundana to Punnaikayal. He further stated that he was engaged to do so by one Kildan S/o.Ravi Koraira. The contraband was duly seized. The mobile phone with A1-Venkatachalam @ Venkatesan was also seized. The said accused as well as contraband were brought to the Station and Crime No.137 of 2019 was registered.

5.The petitioner's earlier bail petitions were dismissed only on the strength of the statement of one Xavier Ponraj recorded under Section 161 of Cr.Pc. I went through the said statement of Xavier Ponraj. The said witness had stated that the petitioner asked him as to whether Xavier Ponraj saw any policeman. The said witness is said to have reprimanded the petitioner for indulging in such illegal activities. Except this so called confession made to the said list witness, there is no other material against the petitioner. There has been no recovery from the petitioner. The contraband was recovered only from A2. More than anything else, at an odd hour, the petitioner is said to have made a call from his mobile phone to that of the witness. This fact could have been very easily verified from the call data. But till date, the call data records have not been obtained. The petitioner's mobile phone was seized and the sim card was said to have been given to the forensic department. But till date, there is no adverse report from the forensic department against the petitioner. The petitioner is in custody since 28.08.2019. More than two years have elapsed. Three of the co-accused have been granted bail. The reasons for granting bail to those persons vide order dated 13.08.2021 in Crl OP(MD) No.9998 of 2021 and 24.09.2021 in Crl OP(MD)No.13819 of 2021 would equally apply to the petitioner and I render a finding that the petitioner is not like to have committed the offence in question. This finding is granted only for the purpose of this bail petition and it will not enure to his benefit in the trial.

6.The petitioner has crossed the first barrier in Section 37 of the Act. It is the admitted case of the prosecution that the petitioner has no bad antecedents. Except the case on hand, no other case has been registered against the petitioner. The petitioner has young children. He is technically proficient. He was employed in oil rigs. I can safely conclude that the petitioner is not likely to commit any offence if let out on bail.



7. Accordingly, the petitioner is directed 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 Special Court for NDPS Cases, Madurai and on further conditions that:

[a] the sureties shall affix their photographs and left thumb impression in the surety bond and the concerned court may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b] the petitioner shall not abscond either during investigation/trial.

[c] the petitioner shall not tamper with the evidence or witness either during investigation or trial.

[d] On breach of any of the aforesaid conditions, the learned Judge/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 is released on bail by the learned Judge/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/-
22/10/2021

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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.

TO

- 1 THE SPECIAL COURT FOR NDPS CASES,
MADURAI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON MADURAI.
- 3 THE INSPECTOR OF POLICE
AATHOOR POLICE STATION, TUTICORIN DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.15066 of 2021
Date :22/10/2021

SKM

<https://hccs.cem.gov.in/hccs/10.2021/3P/5C>