



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 24.01.2022
Pronounced on : 16.02.2022
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL OP(MD). No.819 of 2022

WEB COPY

Sakthi @ Sakthiyendran

: Petitioner/Accused No.3

Vs

State rep. by
The Inspector of Police,
Keerathurai Police Station,
Madurai City.
Cr.No.413 of 2021.

: Respondent/Complainant

For Petitioner : Mr.Niranjana S.Kumar,
Advocate.
For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public prosecutor.

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

PRAYER :-

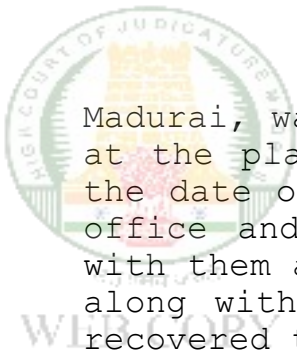
For Bail in Crime No.413 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/Accused, who was arrested and remanded to judicial custody on 09.07.2021 for the offence punishable under Sections 8(c) r/w 20(b)(ii)(c), 25, 29(1) of NDPS Act and Section 25 (1-B)(b) of Arms Act, in Crime No.413 of 2021, on the file respondent police, seeks bail.

2.The case of the prosecution is that based on the secret information received on 08.07.2021 at about 13.15 hours that one Murugan @ Lodu Murugan with his mates bringing the Ganja in one vehicle, namely, Breeza White Car bearing Registration No.TN 59 CK 3492 for the sale of Ganja in the Madurai area from Mela Anupanadi nearby Chinthamani Check Post. Immediately, the respondent police formed a team and arrested all the accused and seized the said car, and one two wheeler along with 30 kgms of Ganja available in the said car.

3.The learned counsel for the petitioner would submit that the petitioner, who is working as a Field Officer in Saveri Transport Finance Private Limited, situated at North Veli Street, Yanakkal,



Madurai, was working at his office, that he was not at all available at the place of occurrence as alleged by the prosecution, that on the date of occurrence two Police officers came to the petitioner's office and enquired about him and also took the petitioner along with them and thereafter, foisted a false case, as if the petitioner along with other accused travelled in a car from which, they have recovered the alleged contraband.

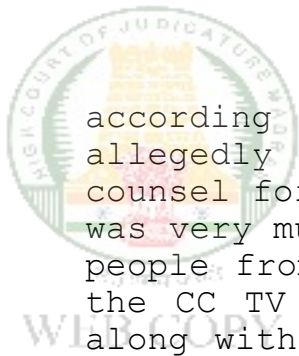
4. When the petitioner's earlier application for bail was pending, considering the submissions made by the learned counsel for the petitioner that the entire incident and the presence of the petitioner at his office was recorded in CC TV cameras available at the petitioner's office i.e., Savery Transport, Finance Company Pvt., Ltd., directed the respondent police to file a report and in pursuance of the directions issued by this Court, three reports came to be filed by the respondent Police reiterating their version that the petitioner was very much available at the occurrence place and that the case put forth by the petitioner is false. Considering the reports of the respondent Police to the effect that they were not able to identify the persons from CC TV footage available, this Court by observing that the same cannot be gone into now elaborately and it is a matter for trial, dismissed the petition.

5. It is not in dispute that thereafter, the respondent police after completing the investigation has laid the final report against five accused arraying the petitioner as third accused. As rightly contended by the learned counsel for the petitioner, the properties including the contraband ganja, cash and jewels were allegedly recovered from the first accused Murugan @ Load Murugan and two wheeler was allegedly recovered from the second accused Ravikumar @ Thavalai Ravi.

6. As already pointed out, it is the specific case of the prosecution that the petitioner was also very much available at the place of occurrence and he was in the Car at the time of arresting the other accused and recovery of the properties.

7. According to the prosecution, though they had intercepted the vehicles at about 14.30 hours, the accused 1 to 3 were arrested at 16.00 hours, 16.15 hours and 16.30 hours respectively. It is also the specific case of the prosecution that the accused 1 and 2 have given voluntary confession statements and the same were recorded by the respondent Police. Even according to the prosecution, the petitioner was available at the place of occurrence and he was also arrested along with other two accused, but they have not taken any confession statement from the petitioner/3rd accused and they have also not offered any explanation for the same.

8. It is not the case of the prosecution that the petitioner had refused to give any confession statements at that time. Moreover, as
<https://hccservedcourts.gov.in/cse/cse> advised by the learned counsel for the petitioner, even



according to the prosecution, there was no specific recovery allegedly from the petitioner. As rightly argued by the learned counsel for the petitioner, when the petitioner's contention that he was very much available in his office and he was taken by two police people from his office and that the same could be ascertained from the CC TV footage available at the petitioner's office, was taken along with the above aspects that no confession was taken from the petitioner and no recovery was made from him, a genuine doubt had arisen as to whether the petitioner was really available at the place of occurrence and was arrested along with the other accused.

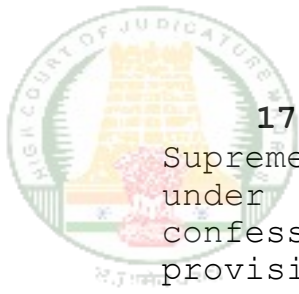
9. At this juncture, it is necessary to refer the common order passed by this Court in Crl.OP(MD)No.5093 of 2021 (batch), dated 23.12.2021, which includes the previous bail application of the petitioner, wherein, this Court after referring to the various decisions has held as follows :

"13. As already pointed out, the main contention of the prosecution is that the confession statement recorded under Section 67 of NDPS Act is admissible in evidence, or not ; is a matter to be gone into and decided at the trial, that since the statement of the co-accused discloses the involvement of the other accused, the confession statement cannot be rejected or discarded while deciding the bail petition and that the case of the prosecution cannot be disbelieved at this point of time.

14. As already pointed out, the Hon'ble Apex Court has specifically held that the Officers, who are invested with powers under Section 53 of NDPS Act are to be considered as Police Officers, as referred in Section 25 of the Indian Evidence Act.

15. Section 25 of the Indian Evidence Act contemplates that no confession made to a Police Officer shall be proved as against a person accused of any offence. The very object of Section 25 is to ensure that the person accused of offence would not be induced by threat, coercion or force to make a confessional statement and the Police Officer is to make every effort to collect or gather the evidence with regard to the commission of offence, but not the confession while the accused is under custody.

16. It is settled law that statements made by an accused before Police Officer, which amount to confessional statement is clearly barred under Section 25 of the Indian Evidence Act and the only exception is under Section 27 of the Indian Evidence Act, which provides that any portion of the information in the confession statement, which leads to discovery of any new fact or thing can be proved.



17. Applying the legal dictum laid down by the Hon'ble Supreme Court in **Tofan Singh's** case any statement recorded under Section 67 of NDPS Act cannot be treated as a confession statement in the trial for the offence under the provisions of NDPS Act. Since the statement under Section 67 of the NDPS Act cannot be treated and relied as a confession statement in the trial itself, then the very question of considering and deciding the validity of the said confession statement at the trial does not arise at all. Moreover, in the absence of any recovery from the accused, now seeking bail, the confession of co-accused implicating the present accused cannot be relied or looked into, so far as the present accused is concerned."

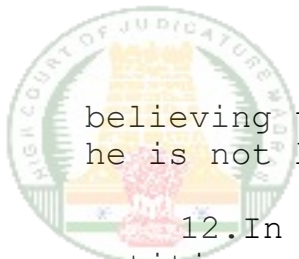
10. Regarding Section 37 of NDPS Act, this Court has held as follows :

"18. Section 37 of the NDPS Act creates bar for grant of bail whenever the recovery is of commercial in nature and also when the offence is under Section 27-A of the NDPS Act.

Perusal of the provisions of Section 37 of NDPS Act would show that although there is a bar created for grant of bail but a departure can be made in case where the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail, then the Court can always consider the grant of bail in that regard. The Hon'ble Supreme Court in the case of **State of Kerala and another vs. Rajesh and another**, reported in **2020 SCC Online SC 81**, has observed;

"20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with nonobstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates."

11. It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are conjunctive and the Court before granting bail has to satisfy that there are reasonable grounds for



believing that the petitioner is not guilty of such offence and that he is not likely to commit such offence again, while on bail.

12. In the case on hand, as already pointed out though the petitioner was alleged to have been arrested along with other accused/A1 and A2, from whom the contraband was recovered, as already pointed out, a serious doubt had arisen about the presence of the petitioner and the consequent arrest. Moreover, even according to the prosecution, the petitioner is not having any previous case for similar offence under the NDPS Act.

13. No doubt, the prosecution has alleged that the petitioner is having two previous cases under the Indian Penal Code. The learned counsel for the petitioner would submit that the first case in Crime No.1926 of 2016 on the file of the E3 Anna Nagar Police Station, for the offence punishable under Sections 392, 397 and 506(ii) IPC, has already been ended in acquittal and that the second case in Crime No.1674 of 2017 on the file of the Thallakulam Police Station, for the offence punishable under Sections 147, 148, 341, 294(b), 323, 324 and 506(ii) IPC, which relates to an occurrence of a dispute between two groups of students of the same college, is pending.

14. Considering the above, this Court is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any such offence, after coming out on bail, as contemplated under Section 37 of NDPS Act. Consequently, this Court concludes that the petitioner is entitled to be enlarged on bail.

15. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties each for a like sum to the satisfaction of the learned Additional District Judge/Principal Special Judge for NDPS Cases, Madurai.

i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity.

ii) the petitioner shall report before the respondent police daily at 10.30 a.m until further orders.

iii) the petitioner shall not tamper with evidence or witness.

iv) the petitioner shall not abscond during trial.

v) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions were breached and the petitioner released on bail by the learned



Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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16/02/2022

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18/02/2022
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 ADDITIONAL DISTRICT JUDGE/
PRINCIPAL SPECIAL JUDGE FOR NDPS CASES,
MADURAI.

2 THE INSPECTOR OF POLICE
KEERATHURAI POLICE STATION,
MADURAI CITY.

3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.NIRANJAN.S.KUMAR, Advocate (SR-1239[I] dated
17/02/2022)

ORDER
IN
CRL OP(MD) No.819 of 2022
Date :16/02/2022

RS/PN/SAR.2(18.02.2022) 6P-6C