



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

Dated: 08/02/2022

PRESENT

The Hon'ble Mr.Justice **G.ILANGO VAN**

Crl.OP(MD)No.508 of 2022

Navaskhan : Petitioner/ Accused No.1

Vs.

The State rep. By its
Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.
(Crime No.75 of 2021)

: Respondent/Complainant

For Petitioner : Mr.VR.Shanmuganathan, Advocate

For Respondent : Mr.S.S.Madhavan
Government Advocate (Criminal side)

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

PRAYER :- For Bail in Crime No.75 of 2021 on the file of the
Respondent Police.

ORDER : The Court made the following order :-

The petitioner, who is arrayed as A1 was arrested on 18/01/2022 and remanded to judicial custody for the offences punishable under sections 8(c) r/w 20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1989, in Crime No.75 of 2021 on the file of the respondent police, seeks bail.

2.The petitioner is facing the charges under sections 8(c) r/w 20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1989.

3.Heard both sides.

4.The earlier bail application that was filed by this petitioner came to be dismissed by the learned Special Court for EC and NDPS Act Cases, Pudukkottai, by order, dated 28/12/2021, in Cr.M.P No.1739 of 2021, since it is a commercial quantity, the mandatory requirement of 37 of NDPS has not been complied with. This petition has been filed on the ground that statutory violations were committed by the investigating agency during the course of



investigation and on the basis of the above said violation of the mandatory provisions of law, he is entitled for bail.

5.Now the case of the prosecution is that on 17/01/2021 at about 23 hours, on secret information the police officials made a search in the premises of the petitioner and they found 260 kgs of ganja and on further enquiry, it was revealed that this petitioner along with his son has stored the same for the purpose of selling in retail and subsequent search has also been conducted as per the provisions of law.

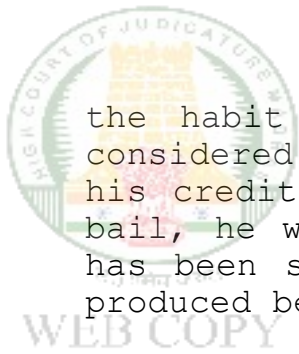
6.Now the learned counsel appearing for the petitioner would submit that the case in Crime No.13 of 2021 was registered against this petitioner on the basis of the confession statement of the co-accused. Later, he was released on bail in view of section 167(2) of Cr.P.C. Similarly, a case in Crime No.60 of 2021 has also been registered, based upon the confession of the co-accused and this petitioner has been arrayed as A5 and after sometime, he was granted bail.

7.From the information that has been given by the petitioner in the petition, he informed that he has involved in two cases of similar in nature. Now the learned counsel appearing for the petitioner, as per section 42 of the NDPS Act, the information must be reduced into writing and that was not done and search ought not to have been made at 23 hours, which is late night. No proper reason has also been recorded by the Investigating Officer with regard to the non compliance. Section 42(2) of the NDPS Act has also been complied, since the information was not forwarded to the superior officials. Similarly, section 50 of the NDPS Act has also been violated and the petitioner was not taken to any Gazetted Officer or Magistrate for the purpose of search. So according to him, these mandatory provisions were not complied.

8.The entire CD file has been called for and perused. A detailed counter has also been filed. In the counter affidavit, it has been stated that this petitioner was also doing ganja business through Kallathoni and he is in the habit of illegally smuggling of ganja to Srilanka. So according to the prosecution, since the petitioner is habitually dealing with the transporting and selling of ganja, he has not satisfied the requirement of section 37 of the NDPS Act.

9.Perusal of the CD file shows that on the place of occurrence itself, the petitioner was arrested. With regard to the contention of the mandatory provisions that have not been properly followed, it is a matter for trial.

10.On going through the entire CD file, this court is in a position to visualise the large network that is operating in this



the habit of smuggling the contraband to Srilanka, I am of the considered view that the petitioner is having previous two cases on his credit, there is no guaranty, if the petitioner is released on bail, he will not commit any offence. Further, the contraband that has been seized from the premises of the petitioner has also been produced before the concerned court on 20/01/2021.

11.It is also seen that since the contraband involved in this case is more than 260 kgs, the entire CD file has been forwarded to NBI. The ground that the petitioner is a heart patient, apart from he had undergone coronary Angiography, is pertaining to the year 2013 and 2019. To show the present health condition of the petitioner, no proper document has been produced. So on the health ground also, the petitioner is not entitled for bail, considering the antecedent of the petitioner and the large network that is involved in the crime, I am of the considered view that it is not a fit case to enlarge the petitioner on bail.

12.In the result, this criminal original petition is **dismissed**.

sd/-
08/02/2022

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/ /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 INSPECTOR OF POLICE,
KENIKARAI POLICE STATION, RAMANATHAPURAM DISTRICT.

2 THE OFFICER INCHARGE,
CENTRAL SUB JAIL, RAMANATHAPURAM.

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

+1CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-908[I] dated 09/02/2022)

ORDER
IN
CRL OP(MD) No.508 of 2022
Date :08/02/2022

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