



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 08/04/2022

PRONOUNCED ON : 12/04/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.1074 of 2022

G.Kaleeshwaran

... Petitioner/Accused

Vs

The State through,
The Inspector of Police,
Keerathurai Police Station.
In Crime No.1075/2020.

... Respondent/Complainant

For Petitioner : M/s.Sevugaraja R, Advocate.

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

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

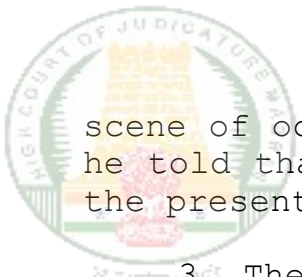
PRAYER :-

For Bail in Crime No.1075/2020 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 05.01.2021 for the offences punishable under Sections 8(c), 20(b)(ii)(C), 29(1) of NDPS Act, 1985 in Cr.No.1075 of 2020, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that upon the secret information received from one informant, on 27.09.2020 at about 04.00p.m., the respondent police with other police officials went to the place of occurrence, ie., Corporation Toilet opposite to Madurai Town Keerathurai Mayanakarai Road Anjali Mayanam, and they are watching over there. The informant identified two persons/accused. On seeing the police officials, one of the accused escaped from the



scene of occurrence. The respondent police caught first accused and he told that he got ganja from the co-accused for sale. Therefore, the present case came to be registered.

3. The petitioner's case is that he is innocent and he has not involved in any offence as alleged by the prosecution.

4. The learned Counsel for the petitioner would submit that there was no recovery from the petitioner, that only on the basis of the confession alleged to have been taken from the co-accused, he was implicated, that the respondent police has purposely added the petitioner, since he was made as an accused in some other false previous cases registered by some other police in order to fulfil their norms and that the petitioner was arrested on 05.01.2021 and is in judicial custody for the past more than one year.

5. The learned Additional Public Prosecutor would submit that the accused Karthick confessed that his associate Valaipazha Chithappa @ Sivakumar had purchased ganja from Andhra Pradesh and he purchased the same through the brothers of said Valaipazha Chithappa viz., Kaleeswaran - petitioner herein, Manikandan and his associate Jelly, that based on the said confession statement, the petitioner and the other accused were added, that the petitioner who is the fourth accused is the brother of the accused 3 and 5, that the petitioner alone has received ganja from his brother Valaipa Chithappa @ Sivakumar and supplied the same to the first accused Karthick, that the confession statement of the petitioner clearly proved the offence committed by him and he accepted the offence and that 30kg of ganja was recovered at the occurrence place, which is a commercial quantity.

6. The learned Additional Public Prosecutor appearing for the State would submit that the petitioner is having 8 previous cases in which 7 cases are under the NDPS Act.

7. The learned Counsel for the petitioner would submit that out of the said cases, 3 cases were already disposed of and in other cases he was falsely implicated.

8. This Court in batch of cases in ***Crl.O.P. (MD) No. 5093 of 2021 etc., batch cases in Muruganandham and another Vs. the State represented by the Inspector of Police, Authoor Police Station, Thoothukudi District and Others***, dated 23.12.2021, has held as follows:

"8. 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.



9. 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.

10. 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.

11. 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."

9. The learned Additional Public Prosecutor appearing for the State would submit that the petitioner was convicted in the case in Cr.No.97 of 2018, on the file of the NIBCID, Madurai. But the

learned Counsel for the petitioner would submit that the petitioner was acquitted in the said case and the other accused were convicted.

9. Whatever it is, the fact remains that the petitioner is having 4 previous cases under the NDPS Act. It is settled law that the twin conditions contemplated in Section 37 of the NDPS Act are to be taken as conjunctive, but not alternative. In the case on hand, as already pointed out, since there was no recovery from the petitioner and he was implicated on the basis of the confession statement from the co-accused and that except the confession statement of the co-accused, there are no other acceptable material or evidence to link the petitioner with the crime in question, this Court can very well record a finding that the petitioner is not guilty of such offence, but at the same time, as already pointed out, since the petitioner is having 4 previous cases under NDPS Act, this Court cannot record a finding that the petitioner is not likely to commit such offence, after coming out on bail. Hence, this Court has no other option, but to reject the petition.

10. In the result, the Criminal Original Petition is dismissed.

Sd/-

12/04/2022

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

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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,
KEERAITHURAI POLICE STATION.
2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.1074 of 2022

Date :12/04/2022

SP/JM/SAR I/22/04/2022/4P/4C