



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 01/03/2022

PRONOUNCED ON : 04/03/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.842 of 2022

Balaji @ Madras Balaji, ... Petitioner/Accused No.16

Vs

THE STATE REP BY,
The Inspector of Police,
Koodal Pudur Police Station,
Madurai District.
Cr.No. 1388 of 2020.

... Respondent/Complainant

For Petitioner : Mr.M.Jegadeesh Pandian,Advocate.

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

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

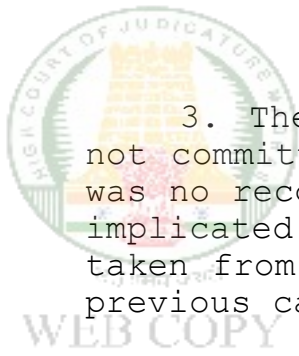
PRAYER :-

For Bail in Crime No.1388 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A16, who was arrested and remanded to judicial custody on 05.09.2021 for the offence punishable under Sections 8(C) r/w 20(b)(ii)(C), 29(1) of NDPS Act, 1985, in Crime No.1388 of 2020, on the file of the respondent Police, seeks bail.

2. The case of the prosecution is that on 05.09.2020 at about 03.00 pm, when the respondent police was on regular surveillance duty in the area of the first accused, they found that near the house of the first accused, the first accused and 15 members were found with white color gunny bag and on seeing the police, they fled away from the spot and that the police chased and arrested A1 to A3 and seized the contraband of 22 kgs of Ganja from them.



3. The petitioner's case is that he is innocent, that he has not committed any offence as alleged by the prosecution, that there was no recovery from the petitioner, that the petitioner was falsely implicated only on the basis of the alleged confession statement taken from the co-accused and that the petitioner is not having any previous case for similar offence.

4. The learned Additional Public Prosecutor would submit that there are totally 16 accused, that the contraband seized is of commercial quantity, that the respondent after completing investigation, has filed the charge sheet before the jurisdictional Court and the same was taken on file in C.C.No.120 of 2021 and that the petitioner is having 10 previous cases for the offences under IPC.

5. The learned Additional Public Prosecutor appearing for the State would submit that when the petitioner was in judicial custody in other case, he was formally arrested on 17.12.2020 and on production before the concerned Court, he was remanded to judicial custody so far as the present case is concerned and that the petitioner is having 10 previous cases includes the case under the NDPS Act. He would further submit that the case in Cr.No.2685 of 2020 came to be registered on 01.12.2020 against the petitioner and another for allegedly possessing 3kgs of ganja and the petitioner was arrested and the contraband was recovered from him.

6. As rightly contended by the learned Counsel for the petitioner, the petitioner was implicated only on the basis of the confession alleged to have been taken from the first accused and admittedly, there was no recovery from the petitioner and there is also no evidence or materials to show that the petitioner was present at the scene of occurrence.

7. This Court in batch of cases in ***Crl.O.P. (MD)No.5093 of 2021 etc., 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:

"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."

8. Considering the above, since the petitioner is having another case under NDPS Act, this Court cannot record a finding that the petitioner is not likely to commit any such offence, after coming out on bail, as contemplated under Section 37 of the NDPS Act. Considering the above, this Court has no other option, but to dismiss this petition.

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

sd/-

04/03/2022

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

SSL

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
KODAL PUDUR POLICE STATION,
MADURAI DISTRICT.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP (MD) No.842 of 2022
Date :04/03/2022

PKP/SBN/SAR-4/10.03.2022/4P/4C