



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

RESERVED ON : 03.03.2022

PRONOUNCED ON: 11.03.2022

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PRESENT

**The Hon`ble Mr.Justice K.MURALI SHANKAR**

CRL OP(MD). No.2631 of 2022

R.Jegateesan

... Petitioner/Accused No.4

Vs

The State Rep. By,  
The Inspector of Police,  
Rayapanpatti Police Station,  
Theni District.  
(Cr.No.24 of 2021).

... Respondent/Complainant

For Petitioner : Mr.G.Karuppasamy Pandian, Advocate for  
Mr.NA.Manimaran, Advocate

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

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

PRAYER :-

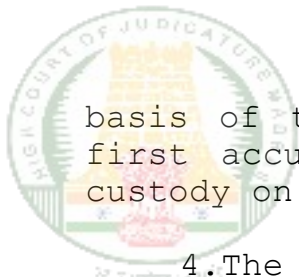
For Bail in Crime No.24 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/A4, who was arrested and remanded to judicial custody on 22.01.2021 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(c), 25 and 29(1) of NDPS Act, in Crime No.24 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 19.01.2021, on receiving secret information, the respondent police conducted a vehicle checkup at Kamanayakanpatti, Kuthanachiammankovil Road, near Kajanthran Garden, at about 07.15 a.m., that they have intercepted a motor bike, namely Bajaj CT (without number plate), which was driven by the first accused and A2 and A3 as pillion riders, that when the respondent police was searching bags, A3 ran away from that place and that A1 and A2 were arrested and Ganja weighing 32kg was seized.

3.According to the prosecution, A3 who escaped from the scene of occurrence, had surrendered before the Judicial Magistrate Court, Periyakulam, that A4, the petitioner herein was implicated on the



basis of the confession statement alleged to have taken from the first accused and that he was arrested and remanded to judicial custody on 22.01.2021.

4.The petitioner's case is that he was not involved any such activities as alleged by the respondent police, that the respondent police has not followed the mandatory provisions of Sections 42, 50, 52A and 57 of NDPS Act, that the alleged search was conducted without any independent witnesses, that no contraband was recovered from the petitioner, that he was not at all present at the time of alleged occurrence and that the petitioner was implicated only on the basis of the confession statement alleged to have taken from the first accused.

5.It is settled position of law that the compliance or non-compliance; adequate compliance or substantial compliance of the mandatory procedures contemplated under Sections 42 and 50 of the NDPS Act can only be gone into and decided only at the Trial stage and not at the Bail stage.

6.Admittedly, the contraband was not recovered from the petitioner and moreover, he was implicated only on the basis of the confession statement alleged to have from the first accused.

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 observed 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."

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8. In the case on hand, according to the prosecution that the petitioner is having six previous cases for similar offence. In the counter affidavit filed by the respondent, he has furnished the particulars about the previous cases of the petitioner and out of six cases, five cases were registered by NIB CID, Theni and the sixth case was registered by the Cumbum South Police Station.

9. It is not in dispute that the petitioner's earlier bail application was dismissed by this Court in Crl.O.P.(MD)No.5756 of 2021, dated 30.04.2021, wherein, the learned Single Judge of this Court has dealt with the case elaborately and came to the decision that the petitioner has not satisfied the twin conditions for granting bail under Section 37 of NDPS Act and dismissed the petition.

10. No doubt, this Court has granted interim bail to the petitioner for taking treatment and for surgery and the interim order was subsequently extended for taking further treatment and that thereafter, in pursuance of the directions of this Court, the petitioner has surrendered before the concerned Prison and he is now in judicial custody.

11. It is settled law that the twin conditions contemplated under Section 37 of the NDPS Act are to be considered as conjunctive. Since the petitioner is having six previous cases, this Court cannot record a finding that the petitioner is not likely to commit such an offence, after coming out on bail. Hence, this Court has no other option, but to say that the petitioner is not entitled to be enlarged on bail.

12. In the result, this Criminal Original Petition is dismissed.

sd/-

11/03/2022

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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



TO

1. THE INSPECTOR OF POLICE,  
RAYAPANPATTI.POLICE STATION,  
THENI 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.2631 of 2022

Date :11/03/2022

USK/PN/SAR-III/16.03.2022/4P/4C