



WEB COPY

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

Date : 12/04/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.3844 of 2022

Lakshmanan

... Petitioner/Accused No.9

Vs

State rep.by
The Inspector of Police,
Athoor Police Station,
Thoothukudi District.
(Crime No.137/2019).

... Respondent/Complainant

For Petitioner : M/s.B.Santhanam Rajesh Kumar, Advocate
for M/s.Pandiyarajan, 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.137 of 2019 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/A.9, who was arrested and remanded to judicial custody on 21.08.2019 for the offences punishable under Sections 8 (c), 20(b)(ii)(c), 29(1) and 25 of NDPS Act, in Crime No.137 of 2019, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 21.08.2019 at about 03.00 a.m., when the respondent police was on routine rounds, they intercepted a TATA ACE vehicle bearing Registration NO.TN-04-AK-4762 at Athoor-Seranthapoomangalam Road, Near V.V.Minerals Company and found 294kgs of Ganja in the said vehicle. Hence, the complaint.



3.The learned counsel for the petitioner would submit that there was no recovery from the petitioner in the present case and that he was arrested on 21.08.2019 and he is in judicial custody for more than two years.

4.The learned Additional Public Prosecutor would submit that the petitioner was implicated only on the basis of the confession taken from the first accused, that the petitioner is having previous case in Crime No.60 of 2018 on the file of the NIB CID, Nagapattinam, in which, 300kgs of Ganja was recovered from the petitioner and that the same is pending.

5.The learned counsel for the petitioner would submit that the co-accused was already released on bail. But in the present case registered under the NDPS Act, just because the co-accused was released on bail is not a ground for releasing the petitioner and the other accused.

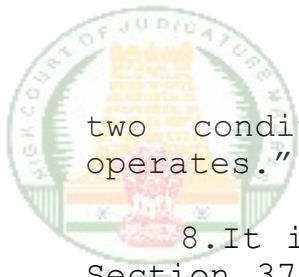
6.No doubt, the earlier applications for bail filed by the petitioner was dismissed by this Court, in CrI.O.P.(MD)Nos.13674 of 2020 and 5097 of 2021, dated 22.03.2021 and 23.12.2021.

7.This Court, in batch of cases in **CrI.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.”

8. It is settled law that the twin conditions contemplated under Section 37 of the NDPS Act are to be considered as conjunctive and not alternative. In the case on hand, as already pointed out, there was no recovery of contraband from the petitioner and he was implicated only on the basis of the confession taken from the first accused. As rightly contended by the learned counsel for the petitioner, except the confession statement of the first accused, the prosecution has neither shown nor produced any material or evidence to link the petitioner with the crime in question. Hence, 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 a previous case under the NDPS Act relating to commercial quantity, this Court cannot record a finding that the petitioner is not likely to commit such offence, after coming out on bail. Considering the above, this Court has no other option, but to dismiss the bail application.

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

Sd/-

12/04/2022

/ TRUE COPY /

/ /2022

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

SJI

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,
ATHOOR POLICE STATION,
THOOTHUKUDI DISTRICT.
2. THE OFFICER INCHARGE,
DISTRICT JAIL, MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.3844 of 2022

Date : 12/04/2022