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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 23/02/2022

PRONOUNCED ON: 28/02/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.2657 of 2022

1. Chandira Dora

2. Padala Apparav

... Petitioners/Accused No.3 & 4

Vs

State rep.by

The Inspector of Police,

Vallam Police Station,

Thanjavur.

(Crime No.729/2021).

... Respondent/Complainant

For Petitioner : M/s.Selvendaran M, Advocate.

For Respondent : M/s.E.Antony Sahaya Prabhar,
Additional Public Prosecutor

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

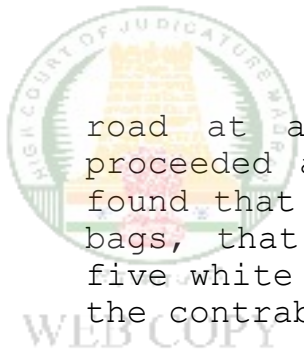
PRAYER :-

For Bail in Crime No.729 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioners 1 and 2/accused 3 and 4, who were arrested and remanded to judicial custody on 11.09.2021 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B) and 29(1) and 25 of NDPS Act, 1985 in Crime No.729 of 2021, on the file of the respondent police, seek bail.

2. The case of the prosecution is that on 10.09.2021, on receiving secret information, they had intercepted a Logan car bearing Registration No.AP-05-BC-4646 in Thanjavur to Trichy main



road at about 13.45 hours, that the car without stopping had proceeded and the police party had chased and stopped and car and found that the petitioners and another transported two white colour bags, that there were six packets of 2kg each containing ganja in five white bags weighing 60kg and that the accused were arrested and the contraband was seized.

3. The petitioners' case is that they were innocents and that they were falsely implicated with ulterior motive to take revenge against them.

4. The learned Counsel for the petitioners would submit that when the petitioners were doing work in their work place at Andhra Pradesh, 15 police men without uniform came there and searched the nearest place of the petitioners' work place, that when the same was questioned by the petitioners, the police party had taken the petitioners and also the second accused along with them under the guise of enquiry and that they had threatened and registered the complaint.

5. The learned Counsel for the petitioners would further submit that there is no chance to transport ganja from Andhra Pradesh to Thanjavur and that the case put forth by the prosecution is false and untenable. The learned Counsel would further submit that the petitioners were allegedly having individual quantity of 12kg of each and the same was recovered from them and that since the said quantity is less than the commercial quantity, but greater than the smaller quantity, Section 37 of the NDPS Act has no application to the case on hand.

6. The learned Additional Public Prosecutor appearing for the State would submit that 60kg of ganja was transported in the Logan car and the same was stopped by chasing and that they have seized the contraband weighing 60kg of quantum of ganja and that since 60kg of quantum of ganja being the commercial quantity, Section 37 of the NDPS Act is certainly applicable to the present case.

7. The learned Additional Public Prosecutor appearing for the State has relied on a decision of the Hon'ble Supreme Court in **Union of India through Narcotice Control Bureau, Lucknow Vs. Md.Nawaz Khan** made in **Crl.A.No.1043 of 2021, dated 22.09.2021**, wherein the Hon'ble Supreme Court has set aside the orders of Allahabad High Court, granting bail to the petitioner therein and the relevant passages are extracted hereunder:

"30. The following circumstances are crucial to assessing whether the High Court has correctly evaluated the application for bail, having regard to the provisions of Section 37:

(i) The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused;

(ii) The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular touch with the other accused persons who were known to him;

(iii) The quantity of contraband found in the vehicle is of a commercial quantity; and

(iv) The contraband was concealed in the vehicle in which the respondent was travelling with the co-accused.

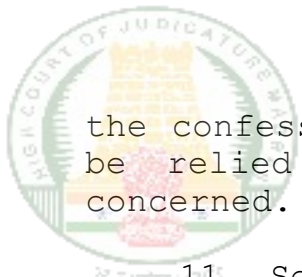
31 The impugned order of the High Court, apart from observing that no contraband was found from the personal search of the respondent has ignored the above circumstances. The High Court has merely observed that "[...] In view of the above, the twin conditions contained under [Section 37\(1\)\(b\)](#) of the NDPS Act stand satisfied. This Court is of the view that if there is reasonable ground, the applicant is entitled to be released on bail." 32 The High Court has clearly overlooked crucial requirements and glossed over the circumstances which were material to the issue as to whether a case for the grant of bail was established. In failing to do so, the order of the High Court becomes unsustainable. Moreover, it has emerged, during the course of the hearing that after the respondent was enlarged on bail he has consistently remained away from the criminal trial resulting in the issuance of a non-bailable warrant against him. The High Court ought to have given due weight to the seriousness and gravity of the crime which it has failed to do."

8. This Court in batch of cases in Cr.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. Bearing the above legal position in mind, let us consider the bail application, now under consideration.

10. As rightly contended by the learned Additional Public Prosecutor, since there was recovery of commercial quantity, this Court is duty bound to see as to whether the twin conditions contemplated under Section 37 of the NDPS Act get satisfied. As already pointed out, since the contraband was recovered from the petitioners, this Court cannot record a finding that the petitioners are not guilty of such offences. As rightly contended by the learned Counsel for the petitioners, no doubt, it is not the case of the prosecution that the petitioners are having previous cases under the NDPS Act. Since the petitioners are not having previous cases under the NDPS Act, this Court can record a finding that the petitioners are not likely to commit any such offence after coming out on bail. But the twin conditions under Section 37 of the Act are to be considered as conjunctive. Since the first condition is not satisfied, this Court has no other option, but to say the petitioners are not entitled to enlarge on bail.



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

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Sub-Assistant Registrar (C.S.IV)
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 SUPERINTENDENT,
CENTRAL JAIL, PUDUKOTTAI,
PUDUKOTTAI DISTRICT.
2. THE INSPECTOR OF POLICE,
VALLAM POLICE STATION, THANJAVUR.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.2657 of 2022
Date :28/02/2022

SP/PN/SAR IV/03/03/2022/5P/4C