



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 23.02.2022
Delivered on : 03.03.2022
PRESENT

WEB COPY

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.2909 of 2022

Michaelraj

...Petitioner/Sole Accused

vs.

The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Thoothukudi.
F.No.DRI/CZU/TTIN/VIII/
48/10/INT-1/2021

... Respondent/Complainant

For Petitioner : Mr.A.Rajini,
Advocate.

For Respondent : Mr.C.Arul Vadivel @ Sekar,
Special Public Prosecutor for
DRI Cases.

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

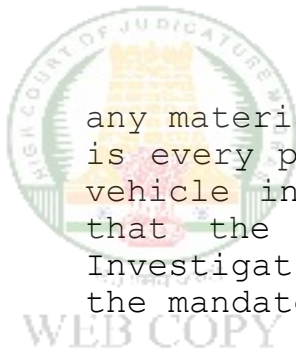
PRAYER :- For Bail in F.No.DRI/CZU/TTIN/VIII/48/10/INT-1/2021 on the file of the Respondent.

ORDER : The Court made the following order :-

The petitioner/accused, who was arrested and remanded to judicial custody on 16.07.2021 for the offences punishable under Sections 8(c), 21, 23, 25, 28 and 29 of NDPS Act, in F.No.DRI/CZU/TTIN/VIII/48/10/INT-1/2021, seeks bail.

2.The case of the prosecution is that on 15.07.2021 at about 17.20 hours, based on some information that the accused would be carrying hashish oil in two wheeler bearing Registration No.TN-69-E-8879, the respondent agency had intercepted the said vehicle and found that the rider was in possession of 5 pockets of 4.705 kgs of Ganja oil and that the said rider/petitioner herein was arrested and the contraband was seized.

3.The case of the petitioner is that the respondent police has arbitrarily fabricated the above case against the petitioner, that they have not followed all the procedures laid down in the NDPS Act, that the respondent police has not disclosed, in the arrest memo,



any material with regard to the ownership of the vehicle, that there is every possibility that the seized substance was implanted in the vehicle in order to implicate the petitioner in the present case, that the independent witnesses have not been examined by the Investigation Officer during search and that they have not followed the mandatory provisions of Sections 42, 50 and 51 of NDPS Act.

4.The learned counsel for the petitioner would submit that the petitioner is innocent person and he is poor coolie, that he is in judicial custody for the past 205 days and that there is no previous case against him.

5.The learned Special Public Prosecutor appearing for the respondent agency would submit that 4705 grams of hashish oil, a narcotic drug covered under the NDPS Act, was recovered from the petitioner, that the petitioner has also given a statement under Section 67 of NDPS Act, that the petitioner was involved in the smuggling of 4 kgs of Heroin in the year 2001 and he was convicted and that the respondent, after completing the investigation, has laid the complaint before the Special Court and the same was taken on file in C.C.No.80 of 2022 and is pending.

6.The learned Special Public Prosecutor would further submit that since the petitioner has not satisfied the twin conditions contemplated under Section 37 of NDPS Act, he is not entitled to be enlarged on bail.

7.It is settled 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. Hence, the arguments advanced by the learned counsel for the petitioner in this regard, cannot be gone into, in the present application.

8.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."

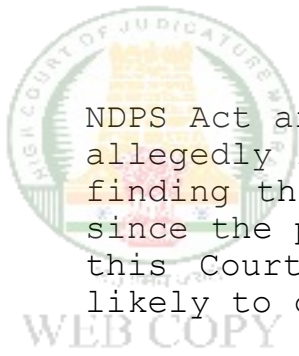
9. In the case on hand, admittedly, the hashish oil seized is of commercial quantity.

10. As rightly contended by the learned Special Public Prosecutor, the contraband was recovered only from the petitioner. Though the learned counsel for the petitioner has taken a stand that they have not produced any materials as to who is the owner of the two wheeler, the learned Special Public Prosecutor would submit that after investigation, they came to know that the said two wheeler is owned by the petitioner's own brother and as per the statement recorded from the petitioner's brother, the petitioner had received the vehicle from his brother for his use and that the petitioner has been using the vehicle as of now.

11. No doubt, the petitioner has stated that there is no previous case pending against him.

12. The learned Special Public Prosecutor would submit that no case is pending against the petitioner under the NDPS Act as of now. He would further submit that the petitioner was earlier involved in the smuggling of 4 kgs of Heroin and the case was registered against him by the Narcotics Control Bureau vide O.R.No.03 of 2021 of NCB, Trivandrum Sub Zone and that after trial, he was convicted and thereafter as per the judgment of the Hon'ble Supreme Court in Crl.A.No.1250 of 2005 dated 11.03.2008 sentenced was ordered to be reduced.

13. As rightly contended by the learned Special Public Prosecutor, the twin conditions contemplated under Section 37 of



NDPS Act are not alternative but conjunctive. Since the property was allegedly recovered from the petitioner, this Court cannot record a finding that the petitioner is not guilty of such offence and that since the petitioner was earlier convicted for possessing of Heroin, this Court cannot also record a finding that the accused is not likely to commit any such offence, while on bail

14.Considering the above, this Court has no other option, but to say that the petitioner is not entitled to be enlarged on bail and hence, this petition is liable to be dismissed.

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

sd/-
03/03/2022

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/ /2022
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 concerned.

TO

- 1 THE SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE,
THOOTHUKUDI.
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL OP(MD) No.2909 of 2022
Date :03/03/2022

SA/VR/SAR.1/08.03.2022/4P/3C