



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 15.03.2022
PRESENT

WEB COPY

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) No.4375 of 2022

K.Ramasamy

... Petitioner/Accused-3

Vs

The State represented by
The Inspector of Police,
NIBCID, Police Station,
Dindigul District.
Cr.No.36 of 2021.

... Respondent/Complainant

For Petitioner : Mr.K.CHELLAPANDIAN, Senior Counsel,
Assisted by M/s.PAMELIN.W, Advocate
For Respondent : Mr.T.SENTHIL KUMAR,
Additional Public Prosecutor

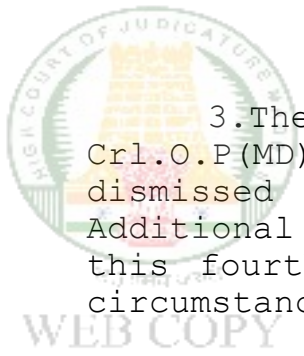
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :- For Bail in Crime No.36 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner, who was arrested on 26.05.2021 for the offence punishable under Sections 8(c) r/w 20(b)(ii)(c) of NDPS Act altered into under Section 8(c) r/w 20(b)(ii)(c), 25 and 29(1) of NDPS Act, moved this fourth bail application.

2.The case of the prosecution is that on 10.05.2021, at about 8.00 a.m., when the police, on secret information, rounded Virupatchikannavaaimedu on Dindigul-Palani Road, two persons came in a two wheeler bearing Reg.No.TN 57 U 4974 and a Car bearing Registration No.TN 56 A 8263 came from East to West and the persons, who came in the car and two-wheeler, exchanged white colour gunny bags. At that time, the police party surrounded them and arrested two accused persons, namely, Karthick and Saravanan. But, two accused persons, namely, Sasikumar and Sesuraja escaped from the scene of occurrence. On search, they found that the accused persons were in possession of 25 kgs of ganja. Subsequently, the respondent Police arrested the escaped accused persons. Based on the confession statement of accused No.2 in this case, this petitioner was arrested by the respondent police on 26.05.2021 and was arrayed as accused No.3 in this case.



3.The earlier bail applications filed by this petitioner in Crl.O.P(MD)Nos.8665 of 2021, 15765 of 2021 and 1200 of 2022 were dismissed by this Court on the objections raised by the learned Additional Public Prosecutor during the relevant point of time. Now this fourth bail application is filed on the following change of circumstances:

(i) The investigation agency, after completion of the investigation, filed the final report in this case and even as per the final report, there is no material against this petitioner, except the confession statement of accused No.2.

(ii) The petitioner is working as a Driver and at the time of occurrence on 10.05.2021, the petitioner was on his duty as a lorry Driver and was proceeding towards Odisha. However, the respondent Police without ascertaining as to whether the petitioner was present in the scene of occurrence, by identifying the mobile location of the petitioner and by collecting the call details, has mechanically filed the final report.

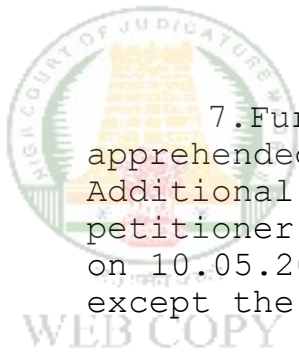
(iii) The accused No.6 namely Karthik @ Karthikeyan, who is also similarly placed was granted bail by this Court in Crl.O.P(MD) No.1334 of 2021 by order dated 23.12.2021.

(iv) The petitioner has not involved in any other offence.

4.The learned Additional Public Prosecutor appearing for the State raised objections that the petitioner is also an accused. The contraband has been recovered from a car bearing Registration No. TN 56 8263, which stands in the name of the wife of the petitioner. Further, accused Nos.1, 4 and 7 are yet to be apprehended and on their apprehension, the investigation agency shall collect certain materials against the petitioner. The learned Additional Public Prosecutor further requests this Court to take note of the counter affidavit filed by the respondents in Crl.O.P(MD)No.15765 of 2021.

5.This Court considered the rival submissions made on either side and perused the materials placed on record.

6.The petitioner, who is accused No.3 in Crime No.36 of 2021 was arrested by the respondent Police based on the confession statement of accused No.2, on 26.05.2021 and 50 Kgs of ganja were recovered from a vehicle bearing registration No.TN 56 8263, which belongs to the wife of the petitioner. The petitioner has been languishing in prison for the past nine months. The earlier bail applications filed by the petitioner were dismissed on the objections raised by the learned Additional Public Prosecutor that the contraband involved in this case was recovered from a car bearing Registration No.TN 56 A 8263.



7.Further, in this case accused Nos.1, 4 and 7 are yet to be apprehended and on their apprehension, according to the learned Additional Public Prosecutor, the materials as against this petitioner could be collected. Though the occurrence has taken place on 10.05.2021, the respondent police have not collected any material except the confession statement of the co-accused.

8.Accused No.6 in this case, who is also similarly placed person was granted bail by this Court in Crl.O.P(MD)No.13334 of 2021, by order dated 23.12.2021 and the relevant portions are extracted hereunder:

(e)Even according to the prosecution, the petitioner was present at the occurrence time along with other accused, admittedly, there was no recovery from the petitioner. As rightly contended by the learned Counsel for the petitioner, except confession statement of the co-accused, the prosecution has not produced any material or evidence to connect the petitioner with the crime in question.

(f) It is also not in dispute that the petitioner is not having any previous case for similar offence or for any other serious offence.

9.In the present case also, the petitioner was implicated only through the confession statement of co-accused viz., accused No.2. The respondent Police have not collected any other material to substantiate that the petitioner was present in the occurrence place, such as tower and mobile location of the petitioner during the relevant time.

10.Since the petitioner claims that he was not present in the place of occurrence and he was proceeding towards Odisha, there is every possibility of establishing the same during the trial by the petitioner.

11.In the light of the above discussion, this Court is inclined to grant bail to the petitioner. Accordingly, this petition is allowed. **The petitioner is directed to be released on bail on his executing a bond for a sum of Rs.2,00,000/- (Rupees Two Lakh only) with two sureties, each for a like sum to the satisfaction of the learned Judge, Special Court for NDPS Act, Madurai** and on further conditions that:

[a]the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Judge may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b]the petitioner shall report before the respondent Police as and when required.

[c]the petitioner shall not abscond either during investigation or trial.



[d]the petitioner shall not tamper with the evidence or witness either during investigation or trial.

[e]On breach of any of the aforesaid conditions, the learned Judge/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner is released on bail by the learned Judge / Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

[g] **The petitioner shall surrender his driving licence to the learned Judge, Special Court for NDPS Act, Madurai.**

12.It is always open to the investigation agency, to move cancellation of bail application, if they collect any other materials against the petitioner.

sd/-

15/03/2022

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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 concerned.

TO

1 THE JUDGE,
SPECIAL COURT FOR EC AND NDPS ACT CASES, MADURAI.

2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
NIBCID, POLICE STATION,
DINDIGUL DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S. PAMELIN.W. Advocate SR.No.2049

ORDER IN

CRL OP(MD) No.4375 of 2022

Date :15/03/2022