



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 10.03.2022
Delivered on : 15.03.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL OP(MD). No.3581 of 2022

WEB COPY

M.Kumar

... Petitioner/Accused No.7

vs.

The State represented by,
The Inspector of Police,
Mathichiyam Police Station,
Madurai City.
(Crime No.344 of 2021)

... Respondent/ Complainant

For Petitioner : Mr.K.Dinesh,Advocate.

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

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

PRAYER :-

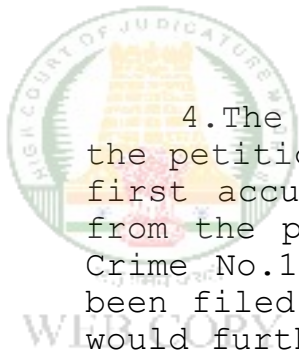
For Bail in in C.C.No.625 of 2021 on the file of the learned Additional District Judge/Presiding Officer, Principal Special Court for EC & NDPS Act cases, Madurai.

ORDER : The Court made the following order :-

The petitioner/A.7 is facing a case for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, in C.C.No.625 of 2021 on the file of the learned Additional District Judge/Presiding Officer, Principal Special Court for EC & NDPS Act cases, Madurai, in Crime No.344 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 17.06.2021 at about 09.15 a.m., on receiving a secret information, the respondent police went to Vaigai river and found the presence of the accused and that two persons, on seeing the police party, have escaped from that place and the police party arrested the remaining three persons and seized 24 kgs of Ganja.

3.The case of the petitioner is that the petitioner was arrested on 23.07.2021 one month after the alleged incident, that the petitioner was implicated only on the basis of the confession alleged to have taken from the first accused and that the petitioner is innocent and he is no way connected with the alleged occurrence.



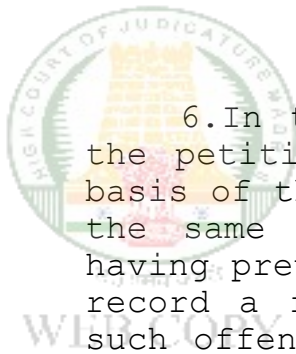
4.The learned Additional Public Prosecutor would submit that the petitioner was added only based on the confession taken from the first accused. He would further submit that there was no recovery from the petitioner, but the petitioner is having previous case in Crime No.116 of 2019 under the NDPS Act and that charge sheet has been filed and the same was taken on file in C.C.No.196 of 2021. He would further submit that in the present case also, charge sheet has already been filed and the case was taken on file in C.C.No.625 of 2021 and the same is pending on the file of the Principal Special Court for EC & NDPS Act cases, Madurai.

5.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."



6. In the case on hand, admittedly, there was no recovery from the petitioner and that the petitioner was implicated only on the basis of the confession statement taken from the co-accused. But, at the same time, according to the prosecution, the petitioner is having previous case under the NDPS act and hence, this Court cannot record a finding that the petitioner is not likely to commit any such offence, after coming out on bail. It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive. Hence, this Court has no other option, but to reject the bail plea of the petitioner.

7. Considering the above, this Court is not inclined to grant bail to the petitioner.

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

sd/-

15/03/2022

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

CSM

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,
MATHICHIYAM POLICE STATION,
MADURAI CITY.
2. THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADRURAI.

+1 CC to M/s.K.DINESH, Advocate (SR-2134[I] dated 17/03/2022)

ORDER

IN

CRL OP(MD) No.3581 of 2022

Date :15/03/2022

PKP/VR/SAR-1/17.03.2022/3P/5C

<https://hcservices.ecourts.gov.in/hcservices/>