



WEB COPY

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

Date : 29/04/2022

PRESENT

**The Hon`ble Mr.Justice B.PUGALENDHI**

**CRL OP(MD) . No.4343 of 2022**

Manikandan ... Petitioner/Accused No.9

Vs

1. State rep.by  
The Inspector of Police,  
NIB CID, Viswanathapuram, Madurai.  
(Crime No.32/2021).

2. The Inspector of Police,  
Avaniyapuram Police Station, Madurai.

3. Thangeswaran,  
Additional Public Prosecutor For  
NDPS Cases, Madurai.

... Respondents/Complainants

(R2 & R3 Suo Motu Impleaded as per  
order of this Hon'ble Court Dated  
20.04.2022 in Cr1.OP.(MD).Nos.3770,  
4343, 5564, 5565 and 7025 of 2022  
by BPJ)

For Petitioner : M/s.Sukumar S, Advocate.

For Respondents : Mr.T.Senthilkumar,  
Government Advocate (Cr1.Side)

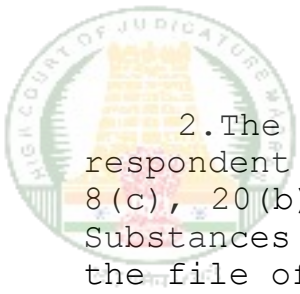
PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in Crime No.32 of 2021 on the file of the  
Respondent Police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the  
<https://hcservices.ecourts.gov.in/hcservices/>  
learned Government Advocate(Cr1. Side) appearing for the respondent.



2.The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offence punishable under Sections 8(c), 20(b), (ii) (C), 25, 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 & 25(1A) of Arms Act in Crime No.32 of 2021 on the file of the respondent police, seeks anticipatory bail.

WEB COPY

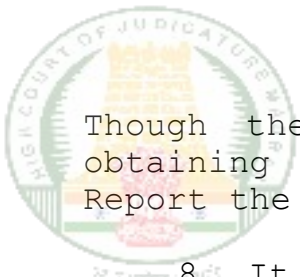
3.The case of the prosecution is that on 13.06.2021 at about 7.00 a.m., upon secret information, the Inspector of Police, Avaniapuram intercepted the vehicle bearing Reg.No.TN 58 AA 1027 belongs to one Marimuthu at CMS Porikadalai Mill Stop, Avaniapuram and enquired the persons, namely, Boominathan @ Boomi, Solai and Marimuthu and Boominathan @ Boomi was found in possession of one pistol, two megacin, Rs.1,00,000/- cash. A confession statement was recorded from Boominathan @ Boomi that they illegally transported 190 kgs of ganja, the Inspector of Police registered a case in Crime No.668 of 2021, against 10 persons, including the petitioner.

4.The learned counsel appearing for the petitioner submits that this is the second application filed by the petitioner for anticipatory bail. There is no other material except the confession statement of the first accused as against the petitioner. The accused Nos.1 to 3 are the main accused in this case and 130 kgs of ganja was recovered from the house of the sixth accused and 60 kgs of ganja was recovered from the house of accused Nos.1 to 3 and those main accused have been released on bail by the trial Court under Section 167(2) Cr.P.C.

5.The learned Government Advocate (Crl.Side) confirmed the grant of statutory bail to the main accused Nos.1 to 3 by the trial Court. He submits that the case was originally registered by the Inspector of Police, Avaniapuram and considering the quantity of ganja involved, the case was transferred to NIBCID Police. Further investigation was conducted by the NIBCID police and final report was also filed and the same is pending in CC No.304 of 2022.

6.This Court considered the rival submissions made and perused the materials placed on record.

7.Earlier application filed by the petitioner was dismissed by this Court based on the submission that the case has been transferred to NIBCID for further investigation. As per the prosecution case, 60 kgs of ganja had been recovered from the accused Nos.1 to 3 from an Autoricksaw and based on the confession statement of the first accused, further 130 kgs of ganja has been recovered from the house of A6. The petitioner is implicated only through the confession statement of the first accused. The respondent police have also completed the investigation and filed the final report as against the petitioner. Excepting the confession statement, no other material was collected by the Investigating Agency against the petitioner. The accused 1 to 3 are the main accused, from whom, the contraband was recovered and they have been released on bail by the trial Court under Section 167(2) of Cr.P.C.



Though there are provisions available under the NDPS Act, for obtaining extension of time upto one year for filing the Final Report the respondents allowed the main accused 1 to 3 to get bail.

8. It is pertinent to note that a Full Bench of the Hon'ble Apex Court, in **Tofan singh Vs State of Tamilnadu**, reported in (2021) 4 SCC, held that a confessional statement under section 67 of NDPS Act is inadmissible in evidence. Further, in the recent judgment of Hon'ble Apex Court, in **state by (NCB) Bengaluru v. Pallulabid Ahmed (Appeal (crl) No.242 of 2022)**, it has been held that confessional statement recorded under section 67 of NDPS Act will remain inadmissible in the trial of an offence under NDPS Act.

9. Considering the fact that based on the confession statement of the co-accused, the petitioner is implicated in this case and as per the decision of the Hon'ble Apex Court, a confessional statement under section 67 of NDPS Act is inadmissible in evidence, this Court is inclined to grant anticipatory bail to the petitioner.

10. Accordingly, this criminal original petition is allowed and the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the Principal Special Court under EC & NDPS Act Cases, Madurai on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five thousand only), with two sureties each for a like sum to the satisfaction of the learned Judge concerned and on further conditions that:

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

[b] the petitioner shall report before respondent police daily at 10.30 a.m., until further orders.

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

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

[e] On breach of any of the aforesaid conditions, the learned Magistrate/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 released on bail by the learned Magistrate/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 abscond, a fresh FIR can be registered under Section 229-A IPC.

WEB COPY

Sd/-  
29/04/2022

/ TRUE COPY /

10/06/2022  
Sub-Assistant Registrar (C.S.II)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

VRN

TO

1. THE PRINCIPAL SPECIAL JUDGE,  
UNDER EC & NDPS ACT CASES, MADURAI.
2. THE INSPECTOR OF POLICE,  
NIB CID, VISWANATHAPURAM, MADURAI.
3. THE INSPECTOR OF POLICE,  
AVANIYAPURAM POLICE STATION, MADURAI.
4. THANGESWARAN,  
ADDITIONAL PUBLIC PROSECUTOR FOR NDPS CASES,  
MADURAI.
5. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI.

+1. CC to M/S.SUKUMAR S Advocate SR.No.4286

ORDER  
IN  
CRL OP(MD) No.4343 of 2022  
Date :29/04/2022

SP/SVR/SAR II/10/06/2022/4P/7C