



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

Reserved on : 17.03.2022

Delivered on : 25.03.2022

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.4135 of 2022

Mohamed Hanifa

... Petitioner/Sole Accused

vs.

The State represented by
The Inspector of Police,
Gandhi Market Police Station,
Trichy City.
(Crime No.490 of 2021)

... Respondent/Complainant

For Petitioner : Mr.K.M.Karunakaran,
Advocate.

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

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

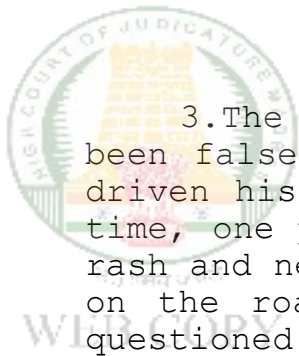
PRAYER :-

For Bail in Crime No.490 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/accused, who was arrested and remanded to judicial custody on 27.07.2021 for the offences punishable under Sections 353 and 307 IPC and Sections 8(c) r/w 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.490 of 2021 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 26.07.2021, the respondent police conducted regular vehicle check up nearby Chennai Bye-pass Road at Pichai Nagar, Trichy, that the respondent police had stopped the vehicle TATA Indica Car bearing Registration No.TN-52-T-6484, but the same was not stopped and escaped from the spot, that the respondent police chased the said vehicle and at that time, the driver of the said car had driven the vehicle rashly and hit one of the member of the police party and thereafter unable to control the car had parked the same near Sanjiv Nagar, that the respondent police had checked the vehicle and recovered the Ganja placed inside the car and that the petitioner was arrested and the present case came to be registered.



3.The case of the petitioner is that he is innocent and he has been falsely implicated in the above case, that the petitioner has driven his car from Manaparai to Pudukottai via Trichy and at that time, one police, namely, Saravanan had driven his two wheeler in a rash and negligent manner and hit the petitioner's car and fell down on the road side and sustained injuries, that when the same was questioned by the petitioner, the said police had scolded and attacked him and taken him to the respondent police station and that thereafter they have registered a case falsely implicating the petitioner under NDPS Act.

4.The learned counsel for the petitioner would submit that the respondent police has not chosen to describe the quantity of Ganja allegedly recovered from the occurrence place, that they have chosen to file an alteration report for reporting the quantity of Ganja allegedly recovered, that the petitioner is a professional driver and is having two children and aged parents and that he has been falsely implicated in the above case. He would further submit that the respondent police has not followed the mandatory procedure contemplated under Section 50 of NDPS Act and also other mandatory procedures to be followed.

5.The learned Additional Public Prosecutor would submit that 21 kgs of Ganja was recovered from the car, in which, the petitioner was driving, that the petitioner is having two previous cases under NDPS Act and that in one case, he was already convicted.

6.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.

7.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."

8. In the present case, as already pointed out, the entire contraband of 21 kg of commercial quantity of Ganja was recovered from the petitioner.

9. According to the prosecution, the petitioner is having two previous cases under NDPS Act and the learned counsel for the petitioner has not specifically disputed the above factum.

10. Since the petitioner has not chosen to satisfy the twin conditions contemplated under Section 37 of NDPS Act, this Court has no other option, but to dismiss the bail application. Hence, this Court is not inclined to grant bail to the petitioner.

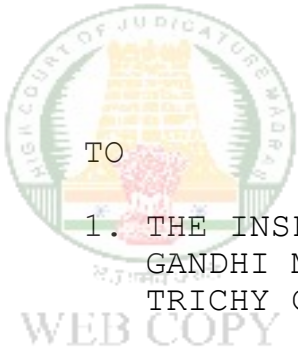
11. In the result, this Criminal Original Petition is dismissed.

sd/-
25/03/2022

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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 INSPECTOR OF POLICE,
GANDHI MARKET POLICE STATION,
TRICHY CITY.
2. THE SUPERINTENDENT,
CENTRAL PRISON, TIRUCHIRAPPALLI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.4135 of 2022
Date :25/03/2022

csm
USK/SBN/SAR-II/29.03.2022/4P/4C