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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 07.04.2022

PRONOUNCED ON: 13.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.4517 of 2022

Menaga

... Petitioner/Accused 8

Vs

State rep.by
The Inspector of Police,
Usilampatty Town Police Station,
Madurai District.
In Crime No.359 of 2021

... Respondent/Complainant

For Petitioner : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu, Advocate.

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

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

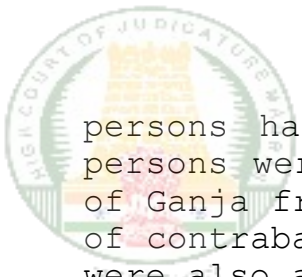
PRAYER :-

For Bail in Crime No.359 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A8 is facing a case for the offence under Sections 8(c), 20(b)(ii)(c) and 25 of NDPS Act on the file of the learned Principal Special Court for EC and NDPS Act Cases, Madurai in Crime No.359 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 30.07.2021 at about 05.30 hours, on receipt of secret information, the respondent police went to Usilampatty near Seemanuthu Sadaiyal Kovil and found white car and two two wheelers, wherein, there were one woman and 11 men, that when the police party tried to nab the accused persons, three



persons had escaped from that occurrence place and the remaining persons were nabbed, that the respondent police has recovered 25kgs of Ganja from the petitioner and in total they have recovered 240kgs of contraband from the accused at the occurrence place and that they were also arrested.

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3.The petitioner's case is that A7 is the husband of the petitioner, that the petitioner is innocent and she has not committed any offence as alleged and that the respondent police has falsely implicated her along with her husband in the above case.

4.The learned Senior Counsel appearing for the petitioner would submit that though the overall joint possession of Ganja was shown as 240kgs, the respondent police has only seized 25kgs from the petitioner, that there is a separate arrest and seizure memo as far as the petitioner is concerned and the same would reveal that recovery were made separately, that though the respondent police has caught hold of all the accused at 06.00 a.m., the arrest was made only at 3.30 p.m., that the respondent police has not followed the mandatory provisions of Sections 42, 50, 52A and 57 of NDPS Act, that the respondent police has not followed the procedures established under Section 50 of the said Act, that there are no private witnesses for the alleged search inspite of the place of occurrence is a busy locality and that the petitioner being a woman, is not having having any bad antecedents.

5.The learned Additional Public Prosecutor would submit that they had complied with all the provisions contemplated under the NDPS Act. He would further submit that whether the mandatory procedures were followed or not cannot be gone into at this stage.

6.Regarding the non-following of the mandatory procedures alleged by the petitioner, 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 Senior counsel for the petitioner in this regard, cannot be gone into, in the present applications.

7.The learned Additional Public Prosecutor would further submit that the petitioner and other accused were in joint possession of 240kgs of Ganja and more particularly, 25kgs of Ganja which is of commercial quantity was recovered from the petitioner. He would submit further that after completion of investigation, the respondent has laid the final report and the case was taken on file in C.C.No.50 of 2022 and the same is pending on the file of the learned Principal Special Court for EC and NDPS Act Cases, Madurai. He would fairly admit that the petitioner is not having any previous cases



8.As already pointed out, the respondent police has specifically recovered 25kgs of contraband from the petitioner. According to the prosecution, they have seized 240kgs of Ganja at the occurrence place from the petitioner and other accused.

9.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."

10.It is settled law that the twin conditions contemplated under Section 37 of the NDPS Act are to be considered as conjunctive and not alternative. As already pointed out, since the contraband of commercial quantity was recovered from the petitioner and that 240kgs of contraband was recovered at the occurrence place from the petitioner and other accused, this Court cannot record a finding that the petitioner is not guilty of such offence as contemplated under Section 37 of the NDPS Act. No doubt, as already pointed out, since the petitioner is not having any previous case under the NDPS act, this Court can very well observe that the petitioner is not likely to commit such offence, after coming out on bail. Since the first condition was not satisfied, this Court has no other option but to dismiss the application.



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

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Sd/-
13/04/2022

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

SJI

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 PRINCIPAL SPECIAL JUDGE FOR
EC AND NDPS ACT CASES, MADURAI.
2. THE INSPECTOR OF POLICE,
USILAMPATTY TOWN POLICE STATION,
MADURAI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S. PRABHU.K Advocate SR.No.3407

ORDER
IN
CRL OP(MD) No.4517 of 2022
Date :13/04/2022

SP/JM/SAR II/19/04/2022/4P/6C