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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 28.03.2022

PRONOUNCED ON: 01.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.4593 of 2022

1.Ibrahim Sha

2.Sivabalakrishnan

3.Sundharsan @ Vellaiyan ... Petitioners/ Petitioners/
Accused No.2,3 & 5

Vs

The State rep.by,
The Inspector of Police,
Thideernagar Police Station,
Madurai District.
(Crime No.194 of 2021).

... Respondent/Respondent/
Complainant

For Petitioner : Mr.Jegadeesh Pandian
Advocate.

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

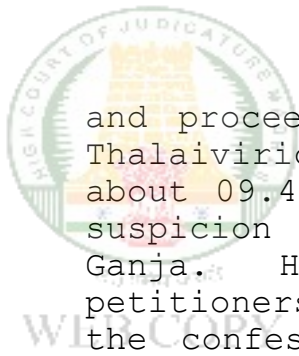
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-For Bail in Crime No742. of 2021 on the file of the
respondent police.

ORDER : The Court made the following order :-

The petitioners/A2, A3 and A5, who were arrested and remanded
to judicial custody on 09.06.2021 for the offences punishable under
Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act, in Crime No.194 of 2021,
on the file of the respondent police, seek bail.

2.The case of the prosecution is that on 09.06.2021 at about
09.00 a.m., the Sub-Inspector of Police had received a secret
information from the informant about the movement of Ganja at
Madurai. The informant recorded the same and obtained necessary permission
from the Superintendent of Police.



and proceeded to the place of occurrence, near Mariamman Temple, Thalaivirichan Lane, Melaperumal Mesthiri Street, Madurai Town, at about 09.45 a.m., and they found a person, namely, Muneeswaran, on suspicion and they enquired him. He was in possession of 1kg of Ganja. He gave a confession statement that he along with the petitioners went and procured 25kgs of Ganja from Cumbum. Based on the confession, the respondent went to Bodi Line House, Madurai Town, at about 12.30 p.m., where they have arrested the petitioners and also seized 23 kgs of Ganja. Hence, the complaint.

3.The case of the petitioners is that on 09.06.2021 at about 11.10 a.m., during the Covid-19 lockdown period, two persons came to the house of the fourth accused, introduced themselves as police personnel attached to the special team and dragged him and took him in their two wheeler, that during the custody, he was threatened to withdraw the complaint made against the then officials of the respondent and that at the time of remand, the respondent had threatened that if he reveal the truth, then his younger brother will be an accused in another case and hence, he did not reveal the truth.

4.The petitioners in their petition have narrated about the alleged incident involving the fourth accused and it is not in dispute that this Court in Crl.O.P.(MD)No.13953 of 2021, vide order dated 02.11.2021 had dealt with all those aspects and granted bail to the fourth accused. According to the prosecution, the petitioners along with A1 and A4 had carried the contraband, but it is false on the face of the report filed by the respondent that the petitioners are not involved any such activities as alleged by the prosecution and that they have not followed the mandatory provisions under Sections 42, 50, 52A and 57 of NDPS Act. It is their further case that though the contraband was seized on 09.06.2021, the same was produced before the concerned Court after much delay and the respondent has not offered any reason or explanation for the delay.

5.The learned Additional Public Prosecutor would submit that the petitioners have been actively involved in several criminal activities and there is every possibility of them absconding, that the first petitioner is having eight previous cases, that the second petitioner is having six previous cases and that the third petitioner is having two previous cases. He would further submit that 1kg of Ganja was recovered from the first accused, that on the basis of the confession of the first accused, when the respondent police went to Madurai Bodi Line 31 Thatched Shed, they found that the petitioners and other accused were in possession of 23kgs of Ganja and that they were arrested and the entire contraband was seized. He would further submit that after completion of the investigation, the respondent has laid the final report and the case was taken on file in C.C.No.319 of 2021 on the file of the Special Court for EC and NDPS Act Cases, Madurai and the same is pending.



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

7.No doubt, though the petitioners are having previous cases under the IPC offences and TNCP Act, they are not having previous cases under the NDPS Act.

8.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



9.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 petitioners are not having any previous cases under the NDPS Act, this Court can very well record a finding that they are not likely to commit such an offence, after coming out on bail. But at the same time, since the contraband of 23kgs of Ganja, which is of commercial quantity was seized from the other accused including the petitioners, this Court cannot record a finding that they are not guilty of such offence. Hence, this Court has no other option but to dismiss the application.

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

sd/-

01/04/2022

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

ORDER

IN

CRL OP(MD) No.4593 of 2022

Date :01/04/2022

SJI

MK/PN/SAR.IV/11.04.2022/4P/4C