



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 01/07/2022

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.4750 of 2022

WEB COPY

Prabakaran @ China Prabhakaran

... Petitioner/Accused No.8

Vs

1. The State Rep. By,
The Inspector of Police,
Subramaniyapuram Police Station,
Madurai District.
(Crime No. 1453 of 2020).

2. Mr.K.Muthupandian,
Special Public Prosecutor
for NDPS Act Cases,
Madurai.

...Respondents/Complainants

R2 *Suo Motu* impleaded as per Order
Dated 20.04.2022 in Crl.Op.(MD).
No.4750/2022 by BPJ)

For Petitioner :M/s.Niranjan S.Kumar,
Advocate.

For Respondent :Mr.T.Senthilkumar,
Additional Public Prosecutor

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

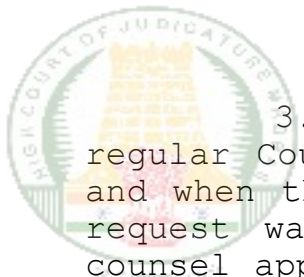
PRAYER :-

For Bail in Crime No. 1453 of 2020 on the file of the
respondent police.

ORDER : The Court made the following order :-

This Criminal Original Petition is filed by the accused
No.8 in Crime No.1453 of 2020, on the file of the respondent police
seeking bail.

2.The petitioner, who is arrayed as accused No.8 in the
above Crime Number, was arrested by the respondent police on
24.02.2021. He moved a bail application before the I Additional
Special Court for NDPS Act Cases, Madurai in Crl.MP No.23 of 2022
and the trial Court by order dated 24.02.2022 dismissed the
application that the petitioner/accused did not make out a case to
defeat the bar under Section 37 of NDPS Act r/w Section 439 of
Cr.P.C. Challenging the order of the trial Court, the present
Criminal Original Petition is filed.



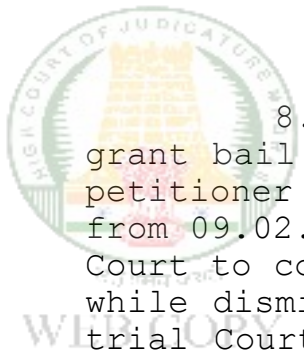
3.This Criminal Original Petition was listed before the regular Court dealing with cases filed under Section 439 of Cr.P.C and when the application was taken up for hearing on 14.03.2022, a request was made for an adjournment and thereafter, the learned counsel appearing for the petitioner filed a memo stating that this application is the second application and the earlier application moved by the petitioner in Crl.OP(MD)No.14532 of 2021 was dismissed by this Court on 28.09.2021 and by mistake, the application is filed as a first application due to miscommunication and requested the Court to post the present application before this Court. In view of the memo filed by the petitioner, this bail application is listed before this Court for hearing.

4.The learned counsel appearing for the petitioner fairly submits that this is the second bail application. However, inadvertently they filed this application as the first bail application and on knowing the fact that already the petitioner moved an application earlier seeking bail, they have filed a memo dated 21.03.2022 and therefore requested this Court to consider this application on its merits.

5.The learned Additional Public Prosecutor vehemently opposed this bail application on the ground that the petitioner has suppressed the earlier orders of this Court as well as the Sessions Court and filed this present application. He further submits that this petitioner has also filed another application before this Court in Crl.O.P(MD) No.17964 of 2021 for interim bail and obtained an order for three days on 16.11.2021, for performing his father's funeral ceremony and thereafter moved the application before the Sessions Court on 09.02.2022 as if it was the fresh bail application. Considering the conduct of the petitioner, the learned Additional Public Prosecutor requested this Court to dismiss this bail application.

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

7.This petitioner is the accused No.8 in Crime No.1453 of 2020 on the file of the respondent police. The case of the prosecution is that on 10.11.2020, the respondent police, on information, intercepted a vehicle and recovered 332 kgs of ganja from the accused 1 & 2. Based on the confession statement of the arrested accused, the other persons were added as accused and this petitioner appears to have been arrested on 24.02.2021. The petitioner moved the bail application before the Principal Special Court for EC & NDPS Act Cases, Madurai in Special Crl.MP No.81 of 2021 and the same was dismissed by the Special Court on 10.06.2021. As against that order, the petitioner moved a bail application before this Court in Crl.O.P No.14532 of 2021, which was dismissed by this Court by order dated 28.09.2021 considering the quantity of ganja involved and the antecedents of the petitioner.



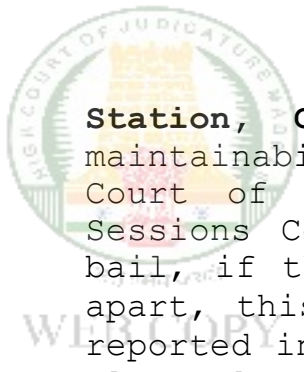
8. In earlier occasion, when this Court was not inclined to grant bail to the petitioner, the learned counsel appearing for the petitioner made a request that the petitioner is languishing in jail from 09.02.2021 and therefore a direction may be issued to the trial Court to complete the trial within the stipulated period. This Court while dismissing the application has also issued a direction to the trial Court to expedite the trial and dispose of the case as early as possible. Thereafter, the petitioner moved the application for interim bail in Crl.OP(MD) No.17964 of 2021 and subsequent bail application before the trial Court in Crl.MP No.23 of 2022 on 09.02.2022. Subsequent to the dismissal of the above applications, the present application in Crl.OP(MD) No.4750 of 2022 is filed by the petitioner, with the dismissal order of the trial Court in Crl.MP No.23 of 2022, as if this is the first bail application before this Court and therefore the application was listed before the regular Court on 14.03.2022. Based on the request of the petitioner, the matter was adjourned to 21.03.2021 and on the memo filed by the petitioner, it is posted before this Court.

9. The Honourable Supreme Court in **Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another**, reported in **1987 AIR 1613** has issued certain directions to prevent abuse process of Court. One such direction is that the subsequent bail application should be placed before the same Judge, who have passed the earlier orders. The relevant portion of the order is extracted as under:-

"The convention that subsequent bail application should be placed before the same judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the court and the confidence of the other side being put in issue and there would be wastage of court's time. Judicial discipline requires that such a matter must be placed before the same judge, if he is available for orders."

This position holds good till date. Based on the aforesaid order, necessary instructions have already been issued to the Registry. The counsels are also expected to refer the earlier orders of the Court in the successive bail applications.

10. This Court in **Crl.O.P.No.26819 of 2008**, in the case of **G. Samuel Vs. the Inspector of Police, K-6, T.P.Chatram Police**



Station, Chennai - 600 030, passed a detailed order re maintainability of entertaining the successive applications by the Court of Sessions, wherein, directions were issued to all the Sessions Courts not to entertain any application for anticipatory bail, if the applicant has already approached the High Court. That apart, this Court in **Raja Elango, City Public Prosecutor Vs.State**, reported in **1998-1 L.W.(Crl)**, has passed a detailed order, which is also relevant in this issue, as follows:

"64.No doubt it is true that Section 439, Code of Criminal Procedure confers concurrent powers in the matter of grant of bail to the Court of Session as well as this Court. But, once High Court took up the matter and gave a finding in the application, the Sessions Court either to have refrained from dealing with the bail application by directing the party to approach the High Court or to find out any substantial change of circumstances, after going through the High Court's order. Admittedly, this was not done.

67.As held by the Apex Court in the various decisions referred to above, even among the Judges of this High Court, when the second application comes before some other Judge, the judicial propriety demands the subsequent application must be placed before the Judge, who already dealt with the matter. The Supreme Court says in its words "the judicial discipline" requires such matters must be placed before the same Judge.

68.The concurrent jurisdiction conferred to the Sessions as well as the High Court would not help the Sessions Court to entertain lightly the bail application after it was dismissed by the High Court. It should be borne in mind the distinction between the existence of jurisdiction and its proper exercise. Entertaining of such bail application, in the absence of substantial change of circumstance, would amount to improper exercise of jurisdiction, which must necessarily be avoided.

69.On the same material, if this Court has already dismissed an application for bail, the learned Sessions Judge should not have allowed that bail application without considering the earlier order, as it would amount to interference in the order of this Court. The judicial discipline demands that the bail order should not have been passed, virtually reversing all the earlier orders passed by his predecessor and this Court, in the absence of any substantial change in the fact-situation.



78. In the backdrop of the analysis of the situation and detailed discussion made above, I am of the considered opinion that the guidelines given below to be followed by the subordinate Judiciary in the situation as referred above would be conducive to the clean administration of justice:

(1) It is the bounden duty of the Court of Session to invariably satisfy itself by obtaining a note of the counsel presenting the petition that either no such bail application has been previously moved before the said Court or in the High Court or if any such application made and dismissed by the said Court or by the High Court, a reference to be made by the Counsel in the petition about the change of circumstances. The change of circumstances should not merely be a cosmetic change, which is of little consequence, but it must be a material and substantial one, which has a direct impact on the earlier decision either by the said Court or by the High Court.

(2) If the Sessions Court feels that passing an order of bail in the face of an earlier order of rejection of bail by the High Court, would appear to overstep the limits of propriety and judicial decorum, it should direct the accused to approach the High Court for bail.

(3) The Court of Session, after verification found that the very same Court has been moved previously for bail, shall consider the reasonings contained in the previous order and then decide the bail petition. Even in the grant of bail in those situation unless there is a material and substantial change of circumstances, it would not be proper for the Sessions Court to pass an order of granting bail by indirectly reversing the earlier order of the same Judge or predecessor to him, because the judicial authorities are not only to serve the public but also to create confidence in the minds of the public that there is a judicial consistency.

(4) The Sessions Court, apart from considering the earlier order, should follow the guidelines in Gurcharan Singh's case (supra), especially in grave crimes.

(5) The Court of Session and the High Court have been given special and concurrent powers under the Code of Criminal Procedure to deal with the bail application under Section 439. The restriction put in Section 437 would not put embargo on the jurisdiction of the Sessions Court and the High Court to exercise discretion in grant of bail, though the object of the restriction put in the section has to be taken note of by this Court. Therefore, the judicial discretion must be exercised in such a way not to violate the basic principles relating to bail and overruling the earlier decision given by the High Court, though the powers



are concurrent.

(6) Such a special power given to the Sessions Court should not be exercised by surrendering its exercise of judicial discretion at the feet of Public Prosecutor. Even when the Public Prosecutor says 'no objection', the Sessions Court cannot shut its eyes and "obey for the direction" in the form of no objection by the Public Prosecutor. The Sessions Court should independently, on consideration of various aspects, such as materials collected in the investigation, the earlier orders passed by the Sessions Court and the High Court, if any, and other guidelines given by this Court and the Supreme Court, decide the bail application."

11. Based on the above orders, certain instructions were also issued to all the Sessions Court that the petitioners were also expected to mention in their applications, with regard to the details as to whether this is the first bail application and whether they have already moved High Court or not. Though this practice is invoked, in the present case on hand, the successive bail application has been filed by the petitioner before the Sessions Court in Crl.MP No.23 of 2022 on 09.02.2022, after the orders of this Court in Crl.O.P(MD) No.14532 of 2021, dated 28.09.2021, even without disclosing the facts. Further, it is to be noted that along with the dismissal order of the trial Court in Crl.MP No.23 of 2022, this present application is filed before this Court as if this is the first bail application filed before this Court.

12. The State represented by the Government Advocate though a party to the earlier application filed by the petitioner in Crl.O.P.(MD) No.14532 of 2021 has not informed the trial Court, at the time when the bail application filed by the petitioner in Crl.MP No.23 of 2022 was taken up for hearing. The learned Additional Public Prosecutor informed the Court about this sequence of events when this application was taken up for hearing on 14.03.2022 and only thereafter, the petitioner filed a memo and subsequently the application is placed before this Court.

13. This Court by earlier order, *suo motu* impleaded the Special Public Prosecutor for NDPS Act cases, Madurai and sought his explanation, in pursuant to which, the learned Special Public Prosecutor has filed a report before this Court that the respondent police gave written objections in the bail application filed in Crl.MP No.23 of 2022 and they have not stated about the earlier orders passed by this Court in Crl.O.P(MD) No.14532 of 2021, dated 28.09.2021. He further submits that the Government has established a software known as Case Information System, wherein, the Courts were directed to enter the details of First Information Report and pre-trial module details including remand, bail and other applications.



14. It is represented by the learned Additional Public Prosecutor that once the order copy, whether bail granted or dismissed, is uploaded by the concerned Court in the e-courts website, it would be reflected in the pre-trial application module. This Court has also verified the pre-trial application module available in the e-courts website. As rightly pointed out by the learned Additional Public Prosecutor, there is a provision in the Case Information System to know the bail status. There is a searching mechanism to ascertain the pre-trial status like, remand, bail, pre-trial applications etc., in the e-courts website. But, this pre-trial data are not entered by the trial Courts and therefore the accused are taking advantage of the same, engaging different counsels and filing bail applications one after another, by suppressing the earlier orders of the Courts. **Since this petitioner has suppressed the earlier application filed before this Court and moved successive bail applications, this Court is not inclined to consider this application on its merits as this petitioner is not moved the Court with clean hands.**

15. Accordingly, this Criminal Original Petition is dismissed. However, liberty is granted to the petitioner to file a fresh application.

16. On going through the e-courts website, it appears that the Courts are not utilizing the facilities in full. The trial proceedings alone are being entered in the Case Information System and therefore this mistake had erupted in. Learned Additional Public Prosecutor has brought to the knowledge of this Court a Circular issued by the Registry regarding the e-Courts Mission Mode project, dated 29.08.2013, wherein, the following instructions were issued:-

"Therefore, all the Presiding Judicial Officers in the State are hereby instructed to

1) Ensure completion of the data entry of all cases pending in courts under their control. Accuracy of the data entered and to locally upload the information on the National Judicial Data Grid;

*2) **Upload the judgments / orders of all cases dealt with during the day, on a daily basis;** (emphasis supplied) and*

3) Spread awareness of the portal <http://ecourts.gov.in> amongst lawyers and litigants through the Cause List / information on the Notice Board and also by informing the Bar Associations.

It is also informed that since the case information is now available on the internet and is accessible to all lawyers and litigants, the Presiding Officers shall strictly comply with the above instructions to avoid complaints and criticism."



17. The Courts must be cautious enough while dealing with the bail petitions and necessary pre-trial proceedings should be entered in the Case Information System and all the order copies, including grant or dismissal of bail / anticipatory bail applications, shall be uploaded by the Courts concerned immediately. Though a Circular in this regard was already issued as early as in the year 2013, the same appears not to have been followed in its *stricto sensu*. The Registrar General may issue necessary instructions to all the Subordinate Courts, especially the Courts dealing with bail / anticipatory bail to enter the pre-trial data in the Case Information System and upload the order copies immediately, so that the purpose and object of the earlier orders of this Court as well as the Circular already issued can be preserved.

This Court places its appreciation to Mr.T.Senthilkumar, learned Additional Public Prosecutor for effectively assisting the Court by placing all the relevant materials, including the Circular issued by the Registry dated 29.08.2013.

sd/-
01/07/2022

/ TRUE COPY /

/07/2022

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

TO

1. THE ADDITIONAL DISTRICT JUDGE/PRESIDING OFFICER,
II ADDITIONAL SPECIAL COURT FOR NDPS ACT CASES,
MADURAI.
2. THE INSPECTOR OF POLICE,
SUBRAMANIPURAM, POLICE STATION,
MADURAI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
5. MR.K.MUTHUPANDIAN,
SPECIAL PUBLIC PROSECUTOR FOR NDPS ACT CASES, MADURAI.

COPY TO :

1. THE REGISTRAR GENERAL,
MADRAS HIGH COURT, MADRAS.
2. MR.T.SENTHILKUMAR,
ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL OP(MD) No.4750 of 2022
Date :01/07/2022