



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 30.03.2022

Delivered on : 01.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.4827 of 2022

Thirumalai

...Petitioner/Accused No.3

vs.

State rep.by
The Inspector of Police,
Subramaniyapuram Police Station,
Madurai.
(Crime No.116 of 2021)

... Respondent/Complainant

For Petitioner : Mr.K.S.Duraipandian, 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.116 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/A.3, who was arrested and remanded to judicial custody on 24.03.2021 for the offences punishable under Section 25 (1B) (b) of ARMS Act, 1959, and Sections 20(b)(ii)(C), 25, 29(1) and 8(c) of NDPS Act, 1985, in Crime No.116 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 23.03.2021, on receipt of secret information, the respondent police team proceeded to the place situated on the North of Madurai Bykara compound wall and South railway track and found that the petitioner and other accused were in possession of 40 kg of Ganja and that the petitioner and other accused were arrested and contraband of 40 kg of Ganja was recovered. Hence, the complaint.



3.The petitioner's case is that he is innocent and he has not committed any offence as alleged by the prosecution and that he has been falsely implicated in the above case.

4.The learned counsel for the petitioner would submit that there was no recovery from the petitioner, that the petitioner is not having any previous cases under NDPS Act and that since the respondent police alleging that the petitioner and others were taking steps to retaliate for the earlier murder, they have foisted the above case.

5.The learned Additional Public Prosecutor would submit that the entire contraband of 40 kg of Ganja was recovered from the petitioner and other accused, that the petitioner was taking the contraband in his two wheeler along with others and that the respondent police, after completing the investigation, has laid the final report and the case was taken on file in C.C.No.388 of 2021 and the same is pending on the file of the Additional District Court / Special Court for EC & NDPS Act Cases, Madurai. He would further submit that the petitioner is having previous cases under IPC offence and not under the NDPS Act.

6.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."

7.It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative.

8.As already pointed out, since the petitioner is not having any previous cases under NDPS Act, this Court can record a finding that the petitioner is not likely to commit any such offence, after coming out on bail. But at the same time, since the contraband of 40 kg of Ganja, which is of commercial quantity, was recovered from the petitioner and other accused at the scene of occurrence, this Court cannot record a finding that the petitioner is not guilty of such offence. Hence, this Court has no other option, but to dismiss the bail application.

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

Sd/-

01/04/2022

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

CSM

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,
SUBRAMANIYAPURAM POLICE STATION,
MADURAI.
2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL OP(MD) No.4827 of 2022

Date :01/04/2022

SP/SVR/SAR I/12/04/2022/3P/4C