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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 28.04.2022

PRONOUNCED ON: 05.05.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.4820 of 2022

Bose @ Subash Chandrabose

... Petitioner/Accused No.3

Vs

The State rep.by,
The Inspector of Police,
NIB-CID Nagapattinam Police Station,
Nagapattinam District.
(Crime No.15 of 2020)

... Respondent/Complainant

For Petitioner : Mr.R.L.Dilipan Pandian
Advocate.

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

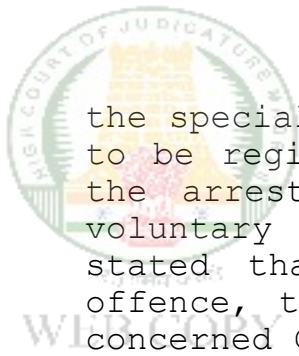
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-For Bail in Crime No.15 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A3, who was arrested and remanded to judicial custody on 22.10.2021 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(C) and 25 of NDPS Act, 1985 in Crime No.15 of 2020, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 21.07.2020 at about 23.30 hours, the Inspector of Police, Coastal Guard Police Station, conducted rounds and at that time, at about 00.30 hours on 22.07.2020, on receiving secret information that some accused persons planned to smuggle illegal contraband to Srilanka through boat and on the basis of the information, the respondent police went to the place and watched the movements of the accused, that two persons came to the boat with possession of one white colour gunny bag each and loaded in the said boat, that immediately the police team caught hold them and on search, they found that totally 36kgs of Ganja available in the gunny bags and that on the basis of



the special report given by the Coastal Guard, the present case came to be registered. It is the further case of the prosecution that the arrested persons, namely, Dhanapal and Mahendran have given voluntary confession statement, wherein, they have specifically stated that the petitioner herein and Kumar had committed the offence, that subsequently, the petitioner was produced before the concerned Court through P.T. Warrant and he was remanded to judicial custody on 21.10.2021.

3.The learned counsel for the petitioner would submit that the entire allegations are false and the same has been purposely created in order to rope the present petitioner in the crime, that he is innocent and that he has not committed any offence as alleged by the prosecution.

4.The learned Additional Public Prosecutor would submit that the respondent police after completing the investigation has laid the final report before the jurisdictional Court and the case was taken on file in C.C.No.4 of 2021 and the same is pending on the file of the Special Court for EC and NDPS Act Cases, Thanjavur.

5.After filing the counter statement, the learned Additional Public Prosecutor submitted that after getting permission from the concerned Court, they have been investigating the case further and have collected materials against the accused including the petitioner and sought time for filing additional counter affidavit. In pursuance of the same, the respondent police has filed an additional counter affidavit, wherein, it has been stated that the petitioner alone had supplied Ganja to the other accused with the help of the accused Dhanapal and Mahendran and the petitioner had planned to smuggle Ganja to Srilanka. Except the above, the respondent police has not raised any other pleading nor furnished any particulars about the collection of new or additional materials against the petitioner.

6.As rightly contended by the learned counsel for the petitioner, the petitioner was implicated only on the basis of the confession alleged to have taken from the co-accused. Moreover, the entire contraband was recovered from the co-accused.

7.The learned Additional Public Prosecutor would submit that the petitioner is having two previous cases for the offence under IPC and he is not having any previous case 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



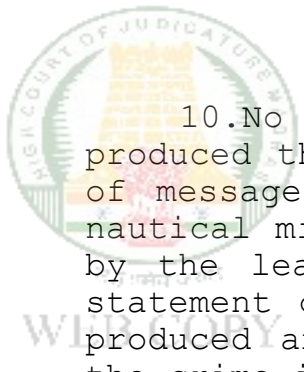
is of commercial in nature and also when the offence is under Section 27-A of the NDPS Act.

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 bail operates."

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. In the case on hand, as already pointed out, the petitioner is not having any previous case under the NDPS Act. Moreover, as already pointed out, there was no recovery from the petitioner and he was implicated only on the basis of the confession statement alleged to have taken from the co-accused. Though the learned Additional Public Prosecutor has alleged that they have collected additional materials, they have not even whispered about the same in the additional counter affidavit.



10.No doubt, the learned Additional Public Prosecutor has produced the copy of Tower mapping of cell numbers and screen shot of messages for the Cell No.9894555323 and attempted to show the nautical mile allegedly shown in the messages. As rightly contended by the learned counsel for the petitioner, except the confession statement of the co-accused, the prosecution has neither shown nor produced any materials or evidence to connect the petitioner with the crime in question.

11.Considering the above facts and circumstances of the case and also the facts that the petitioner is not having any previous case under the NDPS Act, this Court is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any such offence, after coming out on bail, as contemplated under Section 37 of NDPS Act.

12.In view of the above, this Court is inclined to grant bail to the petitioner subject to the following conditions:

13.Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties each for a like sum to the satisfaction of the learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur District.

(i)the sureties shall affix their photographs and left thumb impression in the surety bond and the Special Court/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

(ii)the petitioner shall report before the trial Court on all working days at 10.30 am until further orders;

(iii)the petitioner shall not tamper with evidence or witness;

(iv)the petitioner shall not abscond during trial;

(v)On breach of any of the aforesaid conditions, the learned Special Court/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Special Court/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***.

(vi)If the accused / petitioner thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

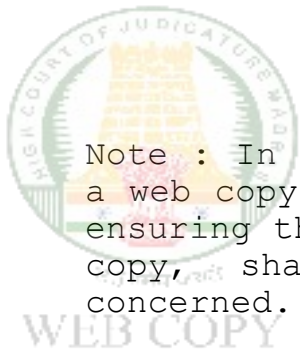
sd/-

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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 ADDITIONAL DISTRICT JUDGE/
PRESIDING OFFICER,
SPECIAL COURT UNDER ESSENTIAL COMMODITIES ACT,
THANJAVUR DISTRICT.
- 2 THE INSPECTOR OF POLICE
NIB CID NAGAPATTINAM POLICE STATION,
NAGAPATTINAM DISTRICT.
- 3 THE OFFICER INCHARGE,
SUB JAIL, THANJAVUR.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.4820 of 2022
Date : 05/05/2022

SJI
MK/JM/SAR.III/05.05.2022/5P/5C