



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Reserved on : 13.04.2022

Delivered on : 20.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.4834 of 2022

Suresh

... Petitioner/Accused No.5

vs.

The State represented by,
The Inspector of Police,
NIB CID, Thoothukudi,
Thoothukudi District.
(Crime No.18 of 2021)

... Respondent/Complainant

For Petitioner : Mr.S.Muniyandi,
Advocate.

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

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

PRAYER :-

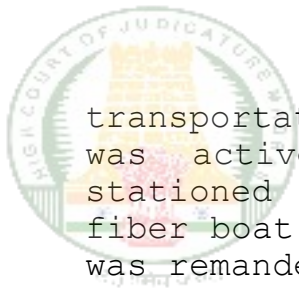
For Bail in Crime No.18 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.5, who was arrested and remanded to judicial custody on 13.01.2022 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(C), 29(1) and 25 of Narcotic Drugs and Psychotropic Substances Act, in Crime No.18 of 2021, seeks bail.

2.The case of the prosecution is that on 08.10.2021 at about 10.00 hours, on receiving of secret information, the respondent police conducted a raid nearby Tharuvaikulam, Santhiyagu Appar Temple, Thoothukudi, that the accused 1 to 4 were found in possession of 530 kg of Ganja and that therefore they were arrested and contraband was seized.

3.It is further case of the prosecution that the first accused Anthony pitchai has given a voluntary confession statement implicating the petitioner and other persons involving in the



transportation and selling of the contraband, that the petitioner was actively involved in the transportation from the Vallam stationed in the sea waters to the sea shore with the help of his fiber boat and that the petitioner was arrested on 12.01.2022 and he was remanded to judicial custody.

WEB COPY

4.The case of the petitioner is that there was no recovery from the petitioner and the recovery was made only from the accused 1 to 4 and that the petitioner was implicated only on the basis of the confession alleged to have taken from the first accused.

5.The learned counsel for the petitioner would submit that the petitioner's name does not find place in the FIR, that except the confession statement of the first accused, there is no other materials to show that the petitioner was involved in the transportation of the contraband from Thoothukudi to Srilanka and that the first accused was arrested on 08.10.2021 and confession statement was taken on that day itself, but the petitioner was arrested only on 13.01.2022 and they have not taken any steps for the past three months. He would further submit that the fourth accused was already released on bail by this Court in Crl.O.P.(MD) No.9998 of 2021 vide order dated 13.08.2021.

6.The learned Additional Public Prosecutor would submit that the petitioner was in regular contact with the accused, who were in possession of the contraband during the raid, that the investigating agency, after obtaining CDR results in respect of the petitioner and other accused has corroborated the phone call details, which confirmed, the active involvement of the petitioner, that the sixth accused is still absconding as on date, that investigation is in preliminary stage and that therefore the petitioner is not entitled to be enlarged on bail.

7.No doubt, the learned Additional Public Prosecutor has produced a copy of the call details of the mobile No.6385303612 belonging to the petitioner herein from 01.07.2021 to 19.10.2021, which was generated on 19.10.2021.

8.According to the prosecution, the petitioner contacted the mobile No.7200737570, which was belonging to the second accused 10 times for the period from 18.09.2021 to 10.10.2021.

9.It is evident from the said call details that there were contacts between two mobile number on 18.09.2021 for one time, two times on 19.09.2021 and thereafter six times on 05.10.2021 and lastly on 10.10.2021 for one time. But according to the prosecution, the accused 1 to 4 were arrested on 08.10.2021 and as such, this Court is at loss to understand as to how the petitioner had contacted the second accused on 10.10.2021.



10. Moreover, as rightly pointed out by the learned counsel for the petitioner, there was no contact between the two numbers on the alleged date of the occurrence or on the immediate previous days.

11. Though the respondent in the counter affidavit has stated that the petitioner was in regular contact with the accused, who were in possession of the contraband during the said crime with the accused 1 to 4, the respondent police has not produced any other call details to show that the petitioner was in regular contact with them.

12. As rightly pointed out by the learned counsel for the petitioner, except the confession statement of the first accused, the prosecution has not shown any other materials or evidences to link the petitioner with the crime in question.

13. The learned Additional Public Prosecutor would further submit that the petitioner is not having any previous cases.

14. Considering the above facts and circumstances and also the facts that there was no recovery from the petitioner and he was implicated only on the basis of the confession alleged to have taken from the first accused and that the petitioner is not having any previous cases under the NDPS Act and that thereby the petitioner has satisfied the twin conditions contemplated under Section 37 of NDPS Act, this Court is inclined to grant bail to the petitioner subject to the following conditions:

15. 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 Principal Special Court for EC and NDPS Act Cases, Madurai.

(i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Sessions Judge/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 respondent police daily at 10.30 a.m., 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 Sessions Judge/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 Sessions Judge/Trial Court himself as laid down by the Hon'ble



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

sd/-
20/04/2022

WEB COPY

/ TRUE COPY /

20/04/2022
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 PRINCIPAL SPECIAL JUDGE,
EC AND NDPS ACT CASES, MADURAI.
2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
3. THE INSPECTOR OF POLICE,
NIB CID, THOOTHUKUDI,
THOOTHUKUDI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.J.JEYA ARON RAJA, Advocate (SR-3604[I] dated 20/04/2022)

ORDER
IN
CRL OP(MD) No.4834 of 2022
Date :20/04/2022

CSM
USK/VR/SAR-IV/20.04.2022/4P/6C