



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

Date : 07/04/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.4875 of 2022

M.Arulkumar

... Petitioner/Accused No.14

Vs

State represented by
The Inspector of Police,
NIB-CID,
Nagapattinam,
Nagapattinam District.
(Crime No.21 of 2021).

... Respondent/Complainant

For Petitioner : Mr.M.Jegadeesh Pandian, Advocate
for Mr.NA.Manimaran, 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.21 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.14, who was arrested and remanded to judicial custody on 03.10.2021 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(c), 29(1) and 25 of NDPS Act in Crime No.21 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 31.07.2021 at about 03.00 hours, on receipt of secret information, the respondent police went to Oosi Matha Temple located at Nagapattinam Beach Road and at 17.00 hours, the respondent police team had intercepted one Innova car bearing Registration No.PY-01-CF-2777 and eight persons were in that car and that after following the mandatory procedures, the respondent police team conducted the search in the said car and found that the accused persons were found in illegal possession of 2 gunny bags of Ganja (each contain 45 kg of Ganja) and they have arrested the accused persons.



3.The learned counsel for the petitioner would submit that the petitioner was implicated only on the basis of the confession alleged to have taken from the co-accused and that the petitioner is not having any previous cases under NDPS Act.

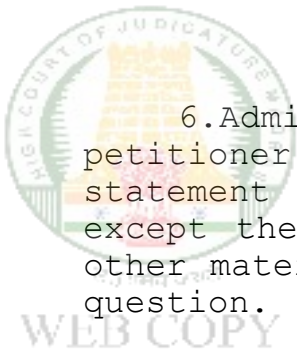
4.The learned Additional Public Prosecutor would submit that the petitioner was implicated only on the basis of the confession taken from the third accused and that the petitioner is not having any previous cases under NDPS Act. He would further submit that investigation has already been completed and charge sheet has been filed and the same was taken on file in C.C.No.16 of 2022 on the file of the learned Additional District and Sessions Court, Special Court for EC Act cases, Thanjavur.

5.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."



6. Admittedly, there was no recovery from the petitioner and the petitioner was implicated only on the basis of the confession statement alleged to have taken from the third accused and that except the confession statement of the third accused, there is no other material or evidence to link the petitioner with the crime in question.

7. Considering the above facts and circumstances of the case and also the fact that the petitioner is not having any previous cases under 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. Hence, this Court is inclined to grant bail to the petitioner subject to the following conditions:

8. 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 & NDPS Act cases, Thanjavur.

(i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/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 daily at 10.30 a.m., on all working days, 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 Magistrate/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 Magistrate/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 thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

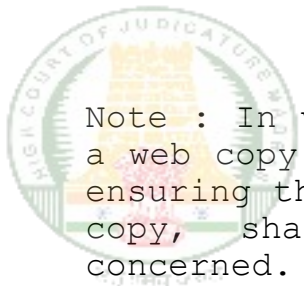
sd/-

07/04/2022

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07/04/2022

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.

WEB COPY

1 THE PRINCIPAL SPECIAL JUDGE FOR EC & NDPS ACT CASES,
THANJAVUR.

2 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SPECIAL COURT FOR EC ACT CASES,
THANJAVUR.

3 THE INSPECTOR OF POLICE
NIB-CID, NAGAPATTINAM,
NAPATTINAM DISTRICT

4 THE OFFICER INCHARGE,
DISTRICT PRISON,
NAGAPATTINAM.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.NA.MANIMARAN, Advocate (SR-3082[I] dated 07/04/2022)

ORDER
IN
CRL OP(MD) No.4875 of 2022
Date :07/04/2022

RS/PN/SAR.4 (07.04.2022) 4P-7C