



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.5208 of 2022

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Vigneshkumar @ Love failure

... Petitioner/Accused No.8

Vs

The State represented by
The Inspector of Police,
Koodalpudhur Police Station,
Madurai District.
(Crime No.1388 of 2020).

... Respondent/Complainant

For Petitioner : Mr.S.S.Sundarapandian,
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.1388 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.8, who was arrested and remanded to judicial custody on 14.12.2020 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act in Crime No.1388 of 2020, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 05.09.2020 at about 14.45 hours, while the respondent police were doing their patrolling duty at Imaiyan Nagar, 1st street, the respondent police has found that 15 persons were in possession of gunny bags, that on seeing the police party, the accused persons tried to escape from that place and the respondent police caught hold of three persons and other persons had escaped from that place and that on search, it was found that the accused were in illegal possession of 22.000 kg of Ganja in the said gunny bags and they have arrested them.

3.The learned counsel for the petitioner would submit that there was no recovery from the petitioner, that the petitioner was implicated only on the basis of the confession statement alleged to have taken from the co-accused and that the petitioner is in judicial custody from 14.12.2020.



4.The learned Additional Public Prosecutor would submit that the petitioner was implicated only on the basis of the confession statement given by the co-accused and that the petitioner is having one previous cases under NDPS Act in Crime No.1805 of 2020 on the file of the Koodalpudur Police Station. He would further submit that there was recovery of 27.000 kg of contraband in the earlier case.

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.It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative. Since the petitioner is having one previous case under the NDPS act, this Court cannot record a finding that the petitioner is not likely to commit any such offence, after coming out on bail. Hence, this Court has no other option, but to dismiss the bail application.



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

sd/-
07/04/2022

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

ORDER
IN
CRL OP(MD) No.5208 of 2022
Date : 07/04/2022

CSM
USK/PN/SAR-IV/11.04.2022/3P/4C