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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 04.04.2022

Delivered on : 07.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.4923 of 2022

K.Jayapaul

... Petitioner/Accused No.4

vs.

The State represented by,
The Inspector of Police,
Mathichiyam Police Station,
Madurai.
(Crime No.354 of 2021)

... Respondent/Complainant

For Petitioner : Mr.K.Dinesh, 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 C.C.No.556 of 2021 on the file of the learned Additional District Judge/Presiding Officer, Principal Special Court for EC & NDPS Act cases, Madurai.

ORDER : The Court made the following order :-

The petitioner/A.4 is facing a case for the offences punishable under Sections 8(c), 20(b)(ii)(C) and 29(1) of Narcotic Drugs and Psychotropic Substances Act, in C.C.No.556 of 2021 on the file of the learned Additional District Judge/Presiding Officer, Principal Special Court for EC & NDPS Act cases, Madurai, in Crime No.354 of 2021, on the file of the respondent police, seeks bail.



2.The case of the prosecution is that on 21.06.2021 at about 08.00 a.m., on receipt of secret information, the respondent police went to Mathina Mosque, Village Vadakarai road, Madurai town, that on seeing the police party, the petitioner and the other accused, had tried to escape from that place, but the respondent police caught hold of them and on search, it was found that the accused persons were in possession of Ganja and that they have arrested them including the petitioner herein and recovered 22.500 kg of Ganja available in white colour bag.

3.The case of the petitioner is that he is in no way connected with the alleged incident, that FIR does not disclose any specific overt act against the petitioner and that the petitioner said to be arrested by the respondent police at the occurrence place had not taken any confession statement and there was no specific recovery from him and the same would show that the petitioner was not at all present at the occurrence place.

4.The learned counsel for the petitioner would submit that even according to the prosecution, no contraband was recovered from the petitioner and no confession has been taken from him and that the petitioner is not having any previous cases.

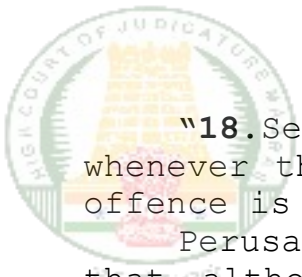
5.The learned Additional Public Prosecutor would submit that the petitioner was very much available at the occurrence place, that the petitioner along with other three accused were arrested on 21.06.2021 at the occurrence place and that 22.500 kg of Ganja was recovered from the occurrence place from all the accused. He would further submit that the first respondent, after completing investigation, has laid a final report and the same was taken on file in C.C.No.556 of 2021 and the same is pending on the file of the learned Additional District Judge/Presiding Officer, Principal Special Court for EC & NDPS Act cases, Madurai.

6.The learned Additional Public Prosecutor would further submit that the petitioner is having four previous cases, in which, three cases were under the IPC offences and one case was under the Criminal Law (Amendment) Act.

7.The learned counsel for the petitioner would submit that the above cases were already disposed of and as of now, no case is pending against the petitioner.

8.The learned Additional Public Prosecutor has not disputed the said factum and he would fairly concede that the petitioner is not having any previous cases under NDPS Act.

9.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."

10. 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 not having any previous cases under NDPS Act, this Court can very well 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 recovery was at the occurrence place and all the accused were available at that place and that the petitioner and other accused were arrested at the same place, this Court cannot record a finding that the petitioner is not guilty of such offence.

11. No doubt, the learned counsel for the petitioner has relied on the decision of this Court passed in **Crl.O.P. (MD) No. 819 of 2022 dated 16.02.2022** in **Sakthi @ Sakthiyendran vs. State represented by the Inspector of Police, Keerathurai Police Station**. In that case, the petitioner therein is not having any previous cases under NDPS Act, but this Court, on considering the materials and circumstances shown by the petitioner/accused, entertained a serious doubt about the presence of the petitioner and the consequent arrest of the petitioner therein and after recording the satisfaction that there are reasonable grounds for believing that the petitioner therein is not guilty of such offence and that he is not likely to commit any such offence, after coming out on bail, has granted bail. Hence, the above decision cannot be applied to the case on hand.



12. Considering the above, this Court has no other option, but to dismiss the petition. Accordingly, this Criminal Original Petition is dismissed.

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Sd/-
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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 ADDITIONAL DISTRICT JUDGE/
PRESIDING OFFICER,
PRINCIPAL SPECIAL COURT
FOR EC & NDPS ACT CASES, MADURAI.
2. THE INSPECTOR OF POLICE,
MATHICHAYAM POLICE STATION, MADURAI.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP (MD) No.4923 of 2022
Date : 07/04/2022

SP/JM/SAR I/12/04/2022/4P/5C