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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 25.04.2022

PRONOUNCED ON: 27.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.5074 of 2022

A.Vijayakumar

... Petitioner/Accused No.3

Vs

The State rep.by,
The Inspector of Police,
NIB-CID, Madurai.
(Crime No.2 of 2022)

... Respondent/Complainant

For Petitioner : Mr.Na.Manimaran
Advocate.

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

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

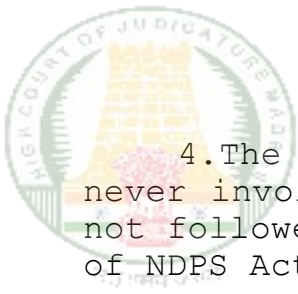
PRAYER :-For Bail in Crime No.2 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A3, who was arrested and remanded to judicial custody on 28.08.2021 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(C), 29(1) and 25 of NDPS Act in Crime No.2 of 2022, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 28.08.2021 at about 17.15 hrs, on receiving the secret information, the Inspector of Police, D2 Sellur Police Station went to Sellur Melathoppu near MGR bridge Junction and at about 17.20 hours, intercepted a TATA Indica Car bearing Registration No.TN-39-AQ-9090, that on seeing the police party, one Haji Ali ran away from the occurrence place and that they have recovered 7 bags containing 206kgs of Ganja and arrested the accused.

3.Admittedly, D2 Sellur Police Station has registered the case in Crime No.675 of 2021 and after initial investigation, the case was transferred to NIB-CID, Madurai and an FIR came to be registered in Crime No.675 of 2022.



4.The petitioner's case is that he is innocent, that he was never involved in any such activity, that the respondent police has not followed the mandatory provisions of Sections 42, 50, 52A and 57 of NDPS Act and that a false case has been foisted against him.

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5.The learned counsel for the petitioner would submit that no contraband was recovered from the possession of the petitioner and that the petitioner was implicated only on the basis of the confession alleged to have taken from the co-accused.

6.The learned Additional Public Prosecutor would submit that the first accused was arrested along with contraband, that the co-accused have given confession statements alleging that the petitioner alone had supplied the contraband to the other accused, that the petitioner alone has produced the Ganja from Andra State and subsequently, transferred the same to other accused and that all the formalities under the NDPS Act have been followed. He would further submit that the petitioner is having two previous cases under the NDPS Act.

7.Regarding the non-following of the mandatory procedures alleged by the petitioner, the compliance or non-compliance; adequate compliance or substantial compliance of the mandatory procedures contemplated under Sections 42 and 50 of the NDPS Act can only be gone into and decided only at the Trial stage and not at the Bail stage. Hence, the arguments advanced by the learned counsel for the petitioner in this regard, cannot be gone into, in the present application.

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



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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, since no contraband was recovered from the petitioner and only on the basis of the confession taken from the co-accused, he was implicated in the above, this Court can very well record a finding that the petitioner is not guilty of such offence. But at the same time, the learned Additional Public Prosecutor would submit that the petitioner is having two previous cases in Crime No.690 of 2019 of Keeraithurai Police Station and the second case in Crime No.534 of 2021 of Padalam Police Station and in the first case, 5.500kgs of Ganja was recovered and in the second case, contraband of 61.400kgs of Ganja was recovered from the petitioner and other accused. Since the petitioner is having two previous cases under the NDPS Act, this Court cannot record a finding that the petitioner is not likely to commit such offence, after coming out on bail. Considering the above, this Court has no other option but to dismiss the bail application.



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

sd/-
27/04/2022

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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
NIB-CID, MADURAI.
- 2 THE OFFICER INCHARGE,
DISTRICT PRISON, PUZHAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL OP(MD) No.5074 of 2022
Date :27/04/2022

SJI
MK/JM/SAR.II/10.05.2022/4P/4C