



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 27.04.2022

PRONOUNCED ON: 05.05.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.5241 of 2022

Manivasagam

... Petitioner/A3

Vs

State rep.by
The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District.
(Crime No.36 of 2022)

... Respondent/Complainant

For Petitioner : Mr.A.S.Rajeswari, Advocate.

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No.36 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 01.02.2022 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(C) and Sections 25 and 29(1) of NDPS Act in Crime No.36 of 2022, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 01.02.2022, on receiving secret information, the respondent police went to Nagapattinam-Puthur Annasalai, at about 06.30 hours and at about 07.00 hours, they have intercepted three vehicles, first one car bearing Registration No.PY-01-CR-8157 followed by the load van bearing Registration No.TN-03-AB-8974 and another car bearing Registration No.TN-12-J-1701, that they have found 450kgs of Ganja in 9 gunny bags (each containing 50kgs) and that all the accused



including the petitioner were arrested at the same place and the contraband was recovered.

3.The petitioner's case is that he is innocent, he has nothing to do with the alleged occurrence and that all the allegations contained in the First Information Report are concocted and invented for the purpose of falsely implicating the petitioner.

4.The learned counsel for the petitioner would submit that the petitioner is doing rice business and for the said purpose, he was utilising the load van and he never indulged in illegal transportation of any banned articles including Ganja, that the petitioner has been enquired, while he was in custody and despite furnishing of necessary particulars and documents showing that he has been legally doing rice business and that the alleged contraband seized does not belong to him, the respondent police arrested him on 01.02.2022.

5.The learned Additional Public Prosecutor would submit that the petitioner was travelling in the first car bearing Registration No.PY-01-CR-8157, that the huge quantity of 450kgs of Ganja was recovered from the petitioner and other accused and that the petitioner was also arrested along with other accused at the same place. He would further submit that the petitioner is not having any previous case under the NDPS Act.

6.This Court, in batch of cases in ***Cr1.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."

7. 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 present case, as already pointed out, since the petitioner is not having any previous case under the NDPS Act, this Court can very well record a finding that the petitioner is not likely to commit such offence, after coming out on bail. But at the same time, since the petitioner was arrested along with other accused at the same place after recovery and that the contraband of 450kgs of commercial quantity was recovered from the petitioner and other accused, this Court cannot record a finding that the petitioner is not guilty of such offence. Considering the above, this Court has no other option but to dismiss the bail application.

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

Sd/-

05/05/2022

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Sub-Assistant Registrar (C.S.IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SJI

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,
NAGAPATTINAM TOWN POLICE STATION,
NAGAPATTINAM DISTRICT.
2. THE SUPERINTENDENT,
CENTRAL JAIL, PULAL, CHENNAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP (MD) No.5241 of 2022

Date : 05/05/2022

SP/PN/SAR IV/10/05/2022/3P/4C