



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

Reserved on : 18.04.2022

Delivered on : 22.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP (MD) . Nos.5311, 5422 & 6907 of 2022

Crl.O.P. (MD)No.5311 of 2022

1. Thendralarasu

2. Udumbu @ Ramu @ Ramanan ... Petitioner/Accused No.9&12

Vs

The State represented by
The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District.
(Crime No.623 of 2021)

... Respondent/Complainant

Crl.O.P. (MD)No.5422 of 2022

Sukumar

... Petitioner/Accused No.6

Vs

The State represented by
The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District.
(Crime No.623 of 2021)

... Respondent/Complainant

Crl.O.P. (MD)No.6907 of 2022

Veerakumar

... Petitioner/Accused No.5

Vs

The State represented by
The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District.
(Crime No.623 of 2021)

... Respondent/Complainant

(in all Ops)

For Petitioners: Mr.V.Karuna, Advocate.

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



PETITIONS FOR BAIL Under Section 439 of Cr.P.C.

COMMON PRAYER :-

For Bail in Crime No.623 of 2021 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioners/accused, who were arrested and remanded to judicial custody on 13.08.2021, 17.08.2021, 01.08.2021 and 01.08.2021 respectively for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(C), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, in Crime No.623 of 2021, seek bail.

2.Admittedly, originally FIR came to be registered in Crime No.623 of 2021 on the file of the Nagapattinam Town Police Station and that thereafter the case was transferred to NIB-CID Nagapattinam and FIR came to be registered in Crime No.21 of 2021 on the file of the NIB-CID Nagapattinam.

3.It is not in dispute that the respondent has already laid a final report and the case was taken on file in C.C.No.16 of 2022 and is pending on the file of the Special Court for EC and NDPS Act Cases, Thanjavur.

4.For sake of convenience, let us refer the present ranking of the accused as shown by the respondent in their counter affidavit and whereunder, the petitioners, in Crl.O.P.(MD)No.5311 of 2022, Thendralarasu and Udumbu @ Ramu @ Ramanan are shown as accused 2 and 6 respectively and that the petitioner, in Crl.O.P.(MD)No.5422 of 2022, Sukumar and the petitioner, in Crl.O.P.(MD)No.6907 of 2022, Veerakumar are shown as accused 11 and 12 respectively.

5.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 a 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.

6.It is further case of the prosecution that on the basis of the confession statement given by the accused Mukesh, other accused were added and that thereafter on the basis of the confession statement of the accused Maran, Arul Kumar was added as 15th accused.



7.The case of the petitioners is that they are innocent and they have not committed any offence as alleged by the prosecution and that the respondent police have foisted the false case as against the petitioners.

8.The learned counsel for the petitioners would submit that no contraband was recovered from the petitioners and they were implicated only on the basis of the confession statement taken from the co-accused and that the petitioners are not having any previous cases under NDPS Act.

9.The learned Additional Public Prosecutor would submit that the accused 11 and 12 were arrested at the occurrence place along with other accused and that the contraband of 90 kgs of Ganja was recovered from the car, in which, eight accused were travelling including the accused 11 and 12. He would further submit that the accused 2 and 6 were added, on the basis of the confession of the co-accused, that they were actively involved in the transportation and selling of Ganja and that since the charge sheet has already been filed, the petitioners may be directed to face the trial.

10.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."

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11.It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative.

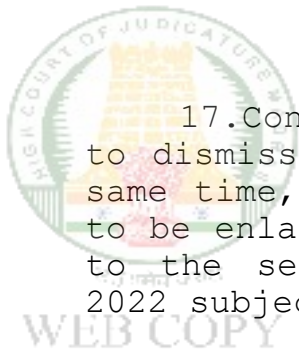
12.In the present case, the learned Additional Public Prosecutor would fairly concede that the accused 6, 11 and 12 are not having any previous cases under NDPS Act, but according to him, the second accused is having two previous cases in Crime Nos.1517 of 2020 and 1490 of 2020 on the file of the Vellipalayam Police Station under NDPS Act.

13.Since the accused 11 and 12 are not having any previous cases under NDPS Act, this Court can very well record a finding that the said accused are not likely to commit any such offence, after coming out on bail, but at the same time, as already pointed out, the contraband of commercial quantity was recovered from the car, in which, eight accused including the accused 11 and 12 were travelling at that time and that the said accused were arrested along with other six accused, this Court cannot record a finding that the said accused are not guilty of such offence.

14.Regarding the second accused, as already pointed out, except the confession statement of the co-accused, the prosecution has not produced any materials or evidences to link the said accused with the crime in question. Hence, this Court can very well observe that the second accused is not guilty of such offence, but at the same time, according to the prosecution, he is having two previous cases under NDPS Act. Hence, this Court cannot record a finding that the second accused is not likely to commit any such offence, after coming out on bail.

15.As already pointed out, there was no recovery from the sixth accused and he was also implicated only on the basis of the confession taken from the co-accused.

16.As rightly contended by the learned counsel for the petitioners, except the confession statement of the co-accused, there is no material or evidence to link the sixth accused with the crime in question. Moreover, the sixth accused is not having any previous cases under NDPS Act and as such, 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.



17.Considering the above, this Court has no other option, but to dismiss the bail pleas of the accused 2, 11 and 12. But at the same time, this Court concludes that the sixth accused is entitled to be enlarged on bail. Hence, this Court is inclined to grant bail to the second petitioner/sixth accused in Crl.O.P.(MD)No.5311 of 2022 subject to the following conditions:

18.Accordingly, the second petitioner in Crl.O.P.(MD)No.5311 of 2022 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 Additional District and Sessions Judge, Special Court under EC Act Cases, Thanjavur District.

(i)the sureties shall affix their photographs and left thumb impression in the surety bond and the Sessions Judge/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

(ii)the second petitioner in Crl.O.P.(MD)No.5311 of 2022 shall report before the trial Court daily at 10.30 a.m., until further orders;

(iii)the second petitioner in Crl.O.P.(MD)No.5311 of 2022 shall not tamper with evidence or witness;

(iv)the second petitioner in Crl.O.P.(MD)No.5311 of 2022 shall not abscond during trial;

(v)On breach of any of the aforesaid conditions, the learned Sessions Judge/Trial Court is entitled to take appropriate action against the second petitioner in Crl.O.P.(MD)No.5311 of 2022 in accordance with law as if the conditions have been imposed and the second petitioner in Crl.O.P.(MD)No.5311 of 2022 released on bail by the learned Sessions Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

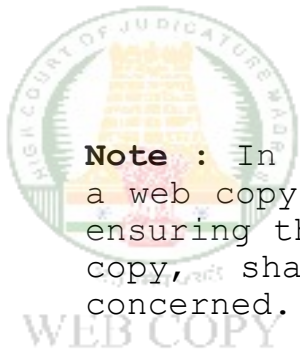
(vi)If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

19.Accordingly, these Criminal Original Petitions are dismissed as against the first petitioner in Crl.O.P.(MD)No.5311 of 2022 and the petitioner in Crl.O.P.(MD)Nos.5422 and 6907 of 2022.

sd/-
22/04/2022

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25/04/2022
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.

TO

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SPECIAL COURT UNDER EC ACT CASES,
THANJAVUR DISTRICT.
2. THE INSPECTOR OF POLICE,
NAGAPATTINAM TOWN POLICE STATION,
NAGAPATTINAM DISTRICT.
3. THE INSPECTOR OF POLICE,
NIB-CID, NAGAPATTINAM,
NAGAPATTINAM 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.V.KARUNA, Advocate (SR-3706[I] dated 22/04/2022)

ORDER
IN
CRL OP (MD) . Nos.5311, 5422 &
6907 of 2022
Date :22/04/2022

csm
USK/PN/SAR-III/25.04.2022/6P/7C