



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 21.04.2022
Delivered on : 25.04.2022

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL OP(MD) . No.5768 of 2022

Kamalam ... Petitioner/Accused No.7
vs.

State represented by
The Inspector of Police,
Thirugokarunam Police Station,
Pudukottai District.
(Crime No.732 of 2021) ... Respondent/Complainant

For Petitioner : Mr.T.Antony Arul Raj,
Advocate.

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

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

PRAYER :-

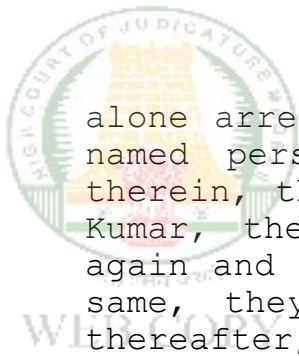
For Bail in Crime No.732 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/A.7, who was arrested and remanded to judicial custody on 09.12.2021 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of Narcotic Drugs and Psychotropic Substance Act, in Crime No.732 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 30.10.2021 at about 13.00 hrs, on receiving a secret information, the respondent police has taken an inspection at Bhuvaneswari Marriage Hall, Kovilpatti, near graveyard, they found two persons (one male and one female) in a Honda Activa vehicle with the yellow gunny bag and on seeing the police party, the male person fled away from the occurrence and the female was caught hold by the police and she was arrested and 2 kgs of Ganja was recovered from her and that based on her confession, the respondent went to her house and recovered 4 bags containing 138 kgs of Ganja. Hence, the complaint.

3.The case of the petitioner is that on the basis of the confession alleged to have taken from the accused Janaki, who was



alone arrested at first, the case has been registered as against 6 named persons, that the petitioner's name does not find place therein, that subsequently in order to implicate the accused Vinoth Kumar, the respondent had taken the accused Janaki into custody again and recorded the second confession statement and based on the same, they have implicated the said accused Vinoth Kumar, that thereafter, the accused Selvi was arrested on 01.11.2021 and thereafter the accused Vasanthi/the daughter of the petitioner was arrested on 09.12.2021 and on the basis of the confession alleged to have taken from the said accused Vasanthi, the petitioner was added as if she along with the other two accused had parted money and that the petitioner was arrested on 09.12.2021 and is still in judicial custody.

4.The learned counsel for the petitioner would submit that the petitioner is aged about 72 years, that since because the family members of the petitioner were made accused, the petitioner was also falsely implicated in the above case, that no contraband was recovered from the petitioner, that except the confession statement of the co-accused, there is no other material available to substantiate the case as against the petitioner and that the petitioner is innocent and she has not committed any offence as alleged by the prosecution.

5.The respondent has filed a counter affidavit raising serious objections to enlarge the petitioner on bail.

6.The learned Additional Public Prosecutor would submit that the contraband seized is of commercial quantity, that the petitioner is having two previous cases under NDPS Act and that investigation revealed that the petitioner was frequently involved in the similar offence along with other accused.

7.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."

8. In the case on hand, as rightly contended by the learned counsel for the petitioner, except the confession statement of the co-accused, the prosecution has not produced any materials or evidences to link the petitioner with crime in question.

9. As already pointed out, the petitioner was implicated only on the basis of the confession of the co-accused. Hence, this Court can very well record a finding that the petitioner is not guilty of such offence, but at the same time, as already pointed out, according to the prosecution, the petitioner is having two previous cases registered in the year 2007 and 2020.

10. Admittedly, the case registered in the year 2007 was already disposed of.

11. The learned Additional Public Prosecutor would further submit that 6.5 kgs of ganja was recovered from the petitioner and on that basis, FIR came to be registered in Crime No.7 of 2020 on the file of the NIB-CID, Sivagangai, and the same is pending.

12. Considering the fact that the petitioner is having previous cases under NDPS Act, this Court cannot record a finding that the petitioner is not likely to commit any such offence, after coming out on bail.

13. Considering the above, this Court has no other option, but to dismiss the bail plea of the petitioner.

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

sd/-

25/04/2022

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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
THIRUGOKARUNAM POLICE STATION, PUDUKOTTAI DISTRICT
- 2 THE OFFICER INCHARGE,
SUB JAIL(SPECIAL PRISON FOR WOMEN), TRICHY.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.5768 of 2022
Date :25/04/2022

SS/JM/SAR:IV/10.05.2022 : 4P/4C