



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

Date : 21/04/2022

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.6073 of 2022

Alexpandi

...Petitioner/Accused No.3

Vs

State rep.by
The Inspector of Police,
Mathichiyam Police Station,
Madurai District.
(Crime No.344 of 2021).

... Respondent/Complainant

For Petitioner : Mr.M.Vigneshkumar, 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.344 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.3, who was arrested and remanded to judicial custody on 18.06.2021 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(c) of NDPS Act in Crime No.344 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 17.06.2021, on receipt of secret information, the respondent police went to bushes on the Vaigai river opposite of the Sha theatre, that on seeing the police party, the petitioner and other accused tried to escape from that place and the respondent police caught hold of them and that on search, it was found that the petitioner and other accused were in illegal possession of 24 kgs of Ganja and they have arrested them.



3.The learned Additional Public Prosecutor would submit that 24 kgs of ganja was recovered at the occurrence place, that the petitioner was arrested along with other co-accused and that the petitioner is having four previous cases, which includes, one previous case under NDPS Act.

4.The learned counsel for the petitioner would submit that those four cases were registered as against the petitioner when he was juvenile.

5.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."

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

7.Since the entire contraband of commercial quantity was recovered from the petitioner and other accused and that the petitioner was arrested along with other accused, this Court cannot record a finding that the petitioner is not guilty of such offence. Since the petitioner has failed to satisfy the first condition, this



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

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Sd/-
21/04/2022

/ /2022
Sub-Assistant Registrar (C.S.II)
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 INSPECTOR OF POLICE,
MATHICHYAM POLICE STATION,
MADURAI DISTRICT.
2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.6073 of 2022
Date :21/04/2022

SP/PN/SAR II/27/04/2022/3P/4C