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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 12.04.2022

PRONOUNCED ON : 20.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.6154 of 2022

Ravikumar @ Thavalai Ravi

... Petitioner/Accused No.2

Vs

The State rep.by,
The Inspector of Police,
Keerathurai Police Station,
Madurai City.
(Crime No.413 of 2021)

... Respondent/Complainant

For Petitioner : Mr.J.Vijayaraja,
Advocate.

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

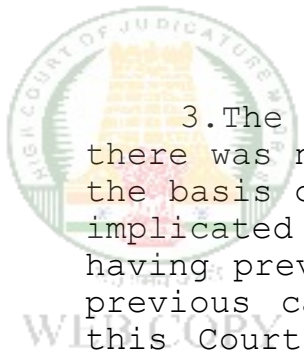
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-For Bail in Crime No.413 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A2, who is facing a case for the offences punishable under Sections 8(c) r/w 20(b)(ii)(c), 25 and 29(1) of NDPS Act and Section 25 (1-B)(b) of Arms Act, in C.C.No.17 of 2022 on the file of the learned I Additional District Judge/Principal Special Judge for NDPS Cases, Madurai in Crime No.413 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that based on the secret information received on 08.07.2021 at about 13.15 hours that one Murugan @ Lodu Murugan with his mates bringing the Ganja in one vehicle, namely, Breeze White Car bearing Registration No.TN-59-CK-3492 for the sale of Ganja in the Madurai area from Mela Anupanadi nearby Chinthamani Check Post. Immediately, the respondent police formed a team and arrested all the accused and seized the said Car and one two wheeler along with 30kgs of Ganja available in the said



3.The learned counsel for the petitioner would submit that there was no seizure of contraband from the petitioner, that only on the basis of the confession of the first accused, the petitioner was implicated in the above case and that though the petitioner is having previous cases and was history sheeted, he is not having any previous cases under the NDPS Act. He would further submit that this Court has granted bail in Crl.O.P.(MD)No.819 of 2022 to the third accused vide order dated 16.02.2022. He would further submit that the respondent police has not complied with Section 50 and other provisions of the NDPS Act.

4.The learned Additional Public Prosecutor would submit that they have recovered 28kgs of Ganja, 3 ½ sovereigns of gold jewels, cash of Rs.10,000/- and two long swords along with car bearing Registration No.TN-59-CK-3492 and a new unregistered Pulsar Motor vehicle, that A1 and A2 have given voluntary confession implicating their involvement, that the respondent police after completing the investigation has laid the final report and that the case was taken on file in C.C.No.17 of 2022 and the same is pending on the file of the learned I Additional District Judge/Principal Special Judge for NDPS Cases, Madurai. He would further submit that the petitioner is having 42 previous cases, which includes a murder case and many cases for the offence under Section 392 IPC.

5.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.

6.No doubt, this Court has granted bail to the third accused in Crl.O.P.(MD)No.819 of 2022 vide order dated 16.02.2022. But in that case, the third accused has taken a stand that while he was working as a Field Officer in Saveri Transport Finance Private Limited, that he was not at all present at the place of occurrence, that two police officers came to the third accused's office and enquired about him and also took the third accused along with the other accused and that thereafter, they have foisted a false case as if the third accused along with the other accused including the petitioner travelled in a car from which they have recovered the alleged contraband. Moreover no confession was taken from the third accused and since a genuine doubt had arisen as to whether the third accused was very much available at the place of occurrence and was arrested along with the other accused and that the third accused is not having any previous cases under the NDPS Act, this Court has granted bail. But according to the prosecution, the contraband of Ganja, cash and jewels were recovered from the first accused and the



herein. According to the prosecution, the two wheeler, driven by the petitioner, followed the car bearing Registration No.TN-59-CK-3492, in which, the accused 1 and 3 were allegedly travelling with the contraband.

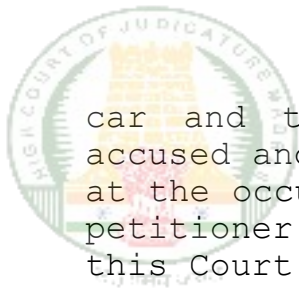
7.This Court, in batch of cases in ***Crl.O.P. (MD)No.5093 of 2021 etc., in Muruganandham and another vs. the State represented by the Inspector of Police, Authoor Police Station, Thoothukudi District and others***, dated 23.12.2021, has observed as follows:-

"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.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 observe that the petitioner is not likely to commit such an offence, after coming out on bail. But at the same time, since the petitioner rode the two wheeler, following the



car and that the petitioner was arrested along with the first accused and that the contraband of commercial quantity was recovered at the occurrence place, 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.

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

sd/-

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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
KEERATHURAI POLICE STATION, MADURAI CITY.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.6154 of 2022

Date : 20/04/2022

SJI

MK/JM/SAR.IV/10.05.2022/4P/4C