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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Reserved on : 26.04.2022

Delivered on : 29.04.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.6884 of 2022

Arumugakani

...Petitioner/ Accused No.4

vs.

The State rep.by,  
The Inspector of Police,  
Muneerpallam Police Station,  
Tirunelveli District.  
(Crime No.526 of 2020)

... Respondent/ Complainant

For Petitioner : Mr.P.Samuel Gunasingh,  
Advocate.

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

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

PRAYER :-For Bail in Crime No.526 of 2020 on the file of the Respondent Police.

**ORDER :** The Court made the following order :-

The petitioner/A4, who was arrested and remanded to judicial custody on 09.09.2020 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances Act, in Crime No.526 of 2020, seeks bail.

2.The case of the prosecution is that on 09.09.2020 at 15.00 hours, the police party conducted vehicle checkup opposite to Sengulam Rahul Hotel and near Joes Suresh College. On seeing the police, two persons who came by motor cycle tried to escape from the place. But the police nabbed both of them. Five persons came by a car following the motor cycle. Three occupants of the car escaped and two were nabbed. They found 9 pockets of Ganja in car and one pocket of Ganja in motorcycle. 10 packs of Ganja each weighing 2.100 kgs and totally 21kgs contraband were seized from them. Hence, the present case has been registered.



3.The learned counsel for the petitioner would submit that the respondent police has not followed the mandatory provision under Section 50(6) of NDPS Act and they have also not followed the provision under Section 52(A) of NDPS Act, that the respondent police has produced the contraband before the trial Court only on 29.01.2021 and that they have not offered any reasons or explanations for the delay.

4.The learned Additional Public Prosecutor would submit that the respondent police had intercepted the two wheeler bearing Registration No.TN-72-BF-2363, which was driven by the sixth accused along with the seventh accused and that following the two wheeler, a car bearing Registration No.TN-05-AP-7270, which was driven by the first accused accompanied by four persons, was also intercepted, that the respondent police arrested the petitioner and the accused 5 to 7 and others had escaped from that place and that they have seized 21kgs of Ganja from two vehicles. He would further submit that the sixth accused, who drove the two wheeler was arrested at the scene of occurrence along with three other accused and contraband of 21kgs was recovered from them.

5.It is not in dispute that the respondent police, after completing investigation, has laid the final report and the case was taken on file in C.C.No.147 of 2021 and the same is pending on the file of the Special Court for NDPS Act Cases, Madurai.

6.It is settled law that 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.

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;

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"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 NDPS Act are to be considered as conjunctive and not alternative.

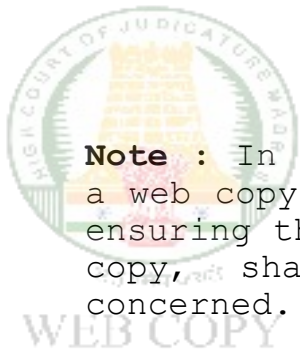
9.In the case on hand, since the petitioner is not having any previous cases under NDPS Act, this Court can very well record a finding that the petitioner is not likely to commit any such offence, after coming out on bail, but at the same time, the entire contraband of 21 kgs, which is of commercial quantity, was recovered from the petitioner/fourth accused along with other accused and that the petitioner was arrested along with other accused at the same place, this Court cannot record a finding that the petitioner is not guilty of such offence.

10.Considering the above, this Court has no other option but to dismiss the bail plea of the petitioner. Hence, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

sd/-  
29/04/2022

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17/05/2022  
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 INSPECTOR OF POLICE  
MUNEERPALLAM POLICE STATION,  
TIRUNELVELI DISTRICT.
- 2 THE SUPERINTENDENT,  
CENTRAL PRISON, PALAYAMKOTTAI,  
TIRUNELVELI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER  
IN  
CRL OP(MD) No.6884 of 2022  
Date :29/04/2022

CSM  
SA/SVR/SAR.II/17.05.2022/4P/4C