



WEB COPY



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Dated: 26/07/2022

PRESENT

The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.OP (MD) Nos. 6494 and 8851 of 2022

Nagappan : Petitioner/A2
in Cr1.OP (MD) No.6494/2022

Ajay Devan : Petitioner/A6
in Cr1.OP (MD) No.8851/2022

Vs.

State rep. By Inspector of Police,
Thiruppuvanam Police Station,
Sivagangai District.
(Crime No.432 of 2020) : Respondent/Complainant
In both Petitions

For Petitioner
in Cr1.OP (MD) No.6494/2022 : Mr.J.Vijayaraja,
Advocate

For Petitioner
in Cr1.OP (MD) No.8851/2022 : Mr.R.L.Dhilipan Pandian,
Advocate

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor
(in both cases)

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

PRAYER :-

For Bail in Crime No.432 of 2020 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioners, who are arrayed as A2 and A6 were arrested, on 08/07/2020 and remanded to judicial custody for the alleged offences punishable under sections 147, 148, 506(ii), 120(B), 399, 402 IPC r/w section 8(c), 20(b)(ii)(c), 25 of NDPS Act, 1985 and sections 20 and 30 of Arms Act, in Crime No.432 of 2020, seek bail.



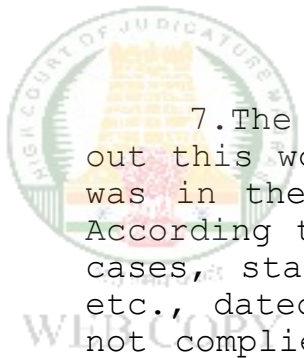
2.The case of the prosecution is that A1 is the wife of load Murugan, who is a notorious history sheeted. There was previous enmity between one Senthil Pandi and loadu Murugan. The above said load Murugan killed one associates of Senthil Pandi. He was arrested and remanded to judicial custody. At that time, A1 used to visit prison and she was introduced to A3. A4 to A15 are the associates of A3. A plan was made by A1 with the above said co-accused to kill any of the associates of the above said Senthil Pandi. In pursuance of the above said plan, on 06/07/2020, all the accused persons gathered in a remote area and on 07/07/2020 in the evening hours, A3 to A15 assembled in the place of occurrence, where A1 and A2 visited. A2 supplied ganja and also asked the co-accused to sell it and get the money. They were also informed the possession of aruval, ganja and dangerous weapons. At that time, the police team went and surrounded all the accused persons. Based upon the above said occurrence, the case was registered and final report was filed and after completing the formalities of investigation, now the trial is about to commence.

3.Those two persons, who are arrayed as A2 and A6 have moved these bail petitions before this court. They were heard at length and the respondent also filed a counter.

4.The first substance of the argument of the petitioners is that no contraband has been recovered from the possession of the petitioners and only at the instance of the confession statement of the co-accused, these two persons have been arrayed as accused. But in the final report, there is a specific allegation to the effect that A2 has supplied ganja and he was also available in that place, when the police team surrounded them. Similarly, there is a specific allegation against A6 to the effect that he was also present in the place of occurrence along with the co-accused and at that time, he was napped on the occurrence spot itself.

5.The contentions on the part of the petitioners that no contraband has been recovered from them and only at the instance of the co-accused confession statement, these petitioners have been arrayed as accused persons are not at all correct on record.

6.Whether the joint possession of all the accused persons can be taken to an independent possession has also been more or less now well settled. Whether they were in conscious possession of ganja is the point to be looked into. It is a matter for trial and that cannot be decided at this stage. But there is a specific allegation as mentioned above, to the effect that A2 only supplied ganja to the co-accused, who in turn packed the same and apart from that, he stored deadly weapons along with the co-accused to do away the enmities. They have been arrested with dangerous weapons on the spot itself.



7.The learned counsel appearing for the petitioners by ¹ig out this would submit that during the above said period, the police was in the habit of foisting false cases against the petitioners. According to him, the co-ordinate Bench of this court in a batch of cases, starting from the case in Cr1.OP(MD)No.1607 of 2021 batch etc., dated 02/11/2022 issued directions. But those directions were not complied by the Government or the police so far. According to him, it is one among such cases. Such sort of contention cannot be taken into account at this stage. That can be brought out only during the course of evidence by cross examining the Investigating Officer. This is a pre-mature stage to record any such finding.

8.The next contention, that was argued is that the word 'any offence' defined in section 37 of NDPS Act will have reference only to the offence under, which provision of the Act and not any others Act. For that purpose, they would rely upon the judgment of the Hon'ble Supreme Court in the case of **Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and another (2005 SCC (Cr1 1057)** and would submit that section 37 of the Act is equivalent to section 21 (4) of the MCOCA act.

9.No doubt, there is an observation to the effect that such sort of interpretation can be given. Per contra, the learned Additional Public Prosecutor would submit that the word 'any offence' mentioned in section 37 of the Act will have reference to any offence under any other Act. According to him, such a narrow interpretation should not be given.

10.The learned counsel appearing for the petitioners in reply would submit that when we keep in mind the object and reason, then the word 'any offence' will have reference only to all the offences under the Act and not any other Act. The word 'any offence' has been interpreted variously by various courts.

11.In my considered view, such a narrow interpretation of section will defeat the object and purpose, for which the Act has been enacted. Keeping in view of the above said purpose, I am of the considered view that the word 'any offence' must be given extended meaning covering the offence under any other Act also. So I am not able to convince the argument of the learned counsel appearing for the petitioners on this point.

12.The next argument is that whether any reasonable ground to believe that the petitioners are not guilty of the offence, while undertaking such a discussion. The Hon'ble Supreme Court in the case of **Narcotics Control Bureau Vs. Mohit Aggarwal (2022 livelaw (SC) 613** was of the view that the courts should not weigh the evidence. So when we apply the principles to the facts of this cases, I am of the considered view that there is a specific allegation that the contraband has been recovered from the joint possession of the



accused and considering their antecedents, in my consideration, the petitioners are not entitled for bail at this stage. Further if they are released on bail, there is no guarantee that they will not commit similar offence or other offences in future.

13. Since the trial is also going to commence and the matter is of the year 2021, there shall be an direction to the trial court to proceed against the accused persons for remedy or appearing, by splitting up the cases, if any necessity arises and dispose of the same within a period five months from the date of receipt of a copy of this order. If the trial could not be completed within the prescribed time fixed by this court, the petitioners are at liberty to seek bail before the concerned court by filing appropriate application

14. With the above said direction, these criminal original petitions are **dismissed**.

sd/-
26/07/2022

/ TRUE COPY /

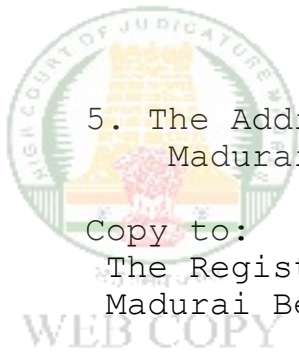
/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER

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/ Presiding Officer, Special Court For EC and NDPS Cases, Pudukottai.
2. The Inspector of Police, Thiruppuvanam Police Station, Sivagangai District.
3. The Superintendant, Central Prison, Madurai.
4. The Superintendant, Central Prison, Trichy.



5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

ORDER

IN

CRL OP (MD) No.6494 & 8851 of 2022

Date :26/07/2022

RD/JM/SAR-IV(11/08/2022) 5P 7C