



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 28/09/2022

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.8158 of 2022

Balamurugan @ Matchabala ... Petitioner/Accused No.11

Vs

The State rep.by,
The Inspector of Police,
Subramaniapuram Police Station,
Madurai City.
Crime No. 1453 of 2020.

... Respondent/Complainant

For Petitioner : M/s.Murugaganesan S,
Advocate.

For Respondent : Mr.R.M.S.Sethuraman,
Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No.1453 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

2.The petitioner/Accused No.11, who was arrested on 14.01.2021, in connection with Crime No.1453 of 2020, for the offences punishable under Sections 8(c), 29(1), 25, 20(b)(ii) (C) of Narcotic Drugs and Psychotropic Substances Act, 1985, seeks bail.

3.The case of the prosecution is that on secret information, the respondent police, on 10.11.2020, at 14.15 hours, had gone to Muthupatti-Avaniyapuram Road and intercepted a Lorry bearing Registration No.TN 38/PC-2506 and found 332 kgs of ganja. On the spot, A1 and A2 were arrested and a case in Crime No.1453 of



2020 was registered. Based on the confession statement of 1st accused, other accused including the petitioner were arrayed as accused. He was arrested on 14.01.2021.

4. The learned counsel appearing for the petitioner made his submissions as follows:-

- ◆ Though the petitioner was arrayed as A1, no recovery of ganja has been made from this petitioner.
- ◆ Final Report has been filed and the same was taken cognizance by the learned II Additional Special Court for NDPS Act Cases, Madurai in CC No.244 of 2021. Hence, likelihood of tempering the witness does not arise.
- ◆ In Seizure Mahazar, it was mentioned that the entire contraband was recovered from A1 alone.
- ◆ The petitioner was implicated as an accused in this case, based on the confession statement of the co-accused and no other materials has been produced as against him.
- ◆ As per the Judgment reported in 2021 (4) SCC 1: Tofan Singh Vs.State of Tamil Nadu, the Honourable Supreme Court has held that implication of the accused only based on the confession statement of the co-accused is not enough for convicting the accused, as the confession given by the co-accused is barred under Section 25 of Indian Evidence Act.
- ◆ Section 37 of NDPS Act deals with the enlargement of bail to any person 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 the accused is not guilty of such offence.
- ◆ The petitioner is having four previous cases as against him regarding IPC offences and the petitioner is not having any other case under the NDPS Act.
- ◆ Co-accused, who is in the same footing as that of the petitioner has already been enlarged on bail by this Court.
- ◆ The petitioner filed Crl.M.P.No.205 of 2022 before the Additional District Judge/Presiding Officer, seeking bail and the same was dismissed on 24.02.2022.
- ◆ The Honourable Supreme Court in Jitendera Taneja Vs. State of UP, reported in 2021(5) SCC 308 has held as follows:-
"That there cannot be an indefinite period of time for which, the appellant can be kept in custody, the investigation having been completed and charge sheet having been filed, it cannot be accepted as a plea that till the trial is complete, the appellant should be kept in custody as the purposes of custody in such a case is of no significance to the extent that custodial interrogation may be required to facilitate proper filing of a charge sheet. We are thus of the view that the appellant is liable to be enlarged on bail on the terms and conditions to the satisfaction of the trial Court".



- ♦ The petitioner is languishing in jail from 14.01.2021.
- ♦ This is the second application filed by the petitioner. Earlier application filed by the petitioner seeking bail in Crl.O.P(MD) No.11398 of 2021 was dismissed by this Court on 02.11.2021.

WEB COPY

5.The learned Additional Public Prosecutor appearing for the respondent police strongly opposes for grant of bail to the petitioner that the contraband involved in this case is 332 kgs of ganja. After completing investigation, charge sheet was filed and the same was taken on file in CC No.244 of 2021. There are three previous cases are pending as against the petitioner, out of which, two cases are 302 IPC and 307 IPC. Under these circumstances, if the petitioner is released on bail, there is possibility for absconding and it will affect the trial proceedings. According to the learned Additional Public Prosecutor, totally there are 11 accused in this case and the petitioner is arrayed as 11th accused. Earlier application filed by the petitioner was dismissed by this Court, considering the nature of offence and the quantity of ganja involved. This is the second application, wherein, the petitioner has taken a specific stand that the co-accused have been released on bail by the trial Court. However, there is a presumption clause as per Section 35 and 54 of NDPS Act. He further submits that Section 37 of NDPS Act clearly mandates that while considering the bail application, the following three conditions have to be satisfied.

- i. first condition is that the prosecution must be given an opportunity to oppose the application; and
- ii. the second is, that the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence.
- iii. The concerned Court must satisfy that the accused is not likely commit any offence while on bail.

5.1.The learned Additional Public Prosecutor reiterates that one of the main consideration for granting bail would be Court must satisfy that the person to be released on bail may not commit any offence. The petitioner, who is having three cases in his credit need not be considered for grant of bail on the recovery alone. The Honourable Apex court repeatedly held that offence committed under NDPS Act is heinous one and Courts have to be very cautious in grant of bails.

6.This Court considered the rival submissions made and also perused the materials placed on record.

7.Admittedly, the petitioner was arrested on 14.01.2021 in connection with Crime No.1453 of 2020 for the offences punishable under Sections 8(c), 29(1), 25, 20(b)(ii) (C) of Narcotic Drugs and Psychotropic Substances Act, 1985. Totally there are 11 accused in this case and the petitioner is 11th accused. It is seen that earlier application filed by the petitioner before this Court as well as the



trial Court were dismissed considering the quantity involved in this case. Now, the petitioner has come forward with the present application, seeking bail, mainly on the ground that the co-accused have been released on bail. According to the learned Additional Public Prosecutor, the investigation in this case has been completed and final report was also filed in CC No.244 of 2022.

8. On perusal of the Final Report filed against the petitioner shows that the petitioner conspired and in connivance with the other accused supported for transportation of such a huge quantity of ganja. This Court is of the view that the stand taken by the petitioner's counsel that co-accused released on bail, charge sheet filed, the petitioner is in jail from 14.01.2021, no recovery has been made from this petitioner cannot be a valid ground for grant of bail to this petitioner, in view of the provisions under Section 37 of NDPS Act. This Court, in many occasions, while dealing with the petitions seeking bail under NDPS Act, reiterates the impact on the Society due to drug trafficking. More over, it is an admitted fact that the petitioner is having four previous cases pending against him.

9. In view of the above, this Court is not inclined to entertain this Criminal Original Petition. Accordingly, this Criminal Original Petition is dismissed. However, considering the period of incarceration and the provisions under Section 37 of NDPS Act, the trial Court shall endeavour to conclude the trial as early as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

sd/-

28/09/2022

/ TRUE COPY /

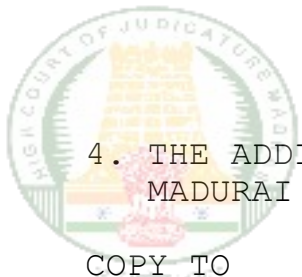
/10/2022

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

VRN

TO

1. THE II ADDITIONAL SPECIAL JUDGE FOR NDPS ACT CASES,
MADURAI.
2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
3. THE INSPECTOR OF POLICE,
SUBRAMANIPURAM POLICE STATION,
MADURAI CITY.



4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE REGISTRAR(JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.MURUGAGANESAN, Advocate (SR-10743[I] dated
29/09/2022)

ORDER

IN

CRL OP(MD) No.8158 of 2022

Date :28/09/2022

RK/SBN/SAR- (03/10/2022) 5P/7C