



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 29/04/2022
Delivered on : 05/05/2022
PRESENT

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The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.7255 of 2022

Dhivagar

... Petitioner/Sole Accused

Vs

State rep.by
The Inspector of Police,
Thanjavur West Police Station,
Thanjavur District.
(Cr.No.132/2022).

... Respondent/Complainant

For Petitioner : Mr.GOPALA KRISHNA LAKSHMANA RAJU, Senior Counsel
for Mr.I.VELPRADEEP, Advocate

For Respondent : Mr.R.MEENAKSHI SUNDARAM,
Additional Public Prosecutor

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

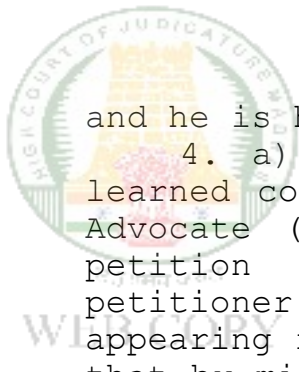
PRAYER :- For Bail in Crime No.132 of 2022 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/Accused, who was arrested on 19.01.2022 for the alleged offence under Sections 8 (C) r/w 20(b)(ii) (B) & 22 (c) of Narcotic Drugs and Psychotropic Substances Act 1985, in Crime No.132 of 2022 on the file of the respondent Police, seeks bail.

2.The case of the prosecution is that on 19.01.2022 at about 11.00 hours, on receiving a secret information, the respondent Police went to the place near Sevappamayakkanvari Periya Aatrupaalam and found the accused in illegal possession of 1.200 kg of Ganja and 550 grams of Diazepam.

3.The petitioner's case is that he is a Social Worker and delivered the food pockets to the needy during the lock-down period, that there was a quarrel between the Police Officials and this petitioner regarding wearing of mask and due to said quarrel, the respondent Police registered a false case against the petitioner, that he is innocent and he has not committed any offence as alleged by the prosecution and that he is hailing from respectable family



and he is having high reputation among the people at his locality.

4. a). On 04.02.2022, considering the submissions made by the learned counsel for the petitioner and also the learned Government Advocate (Criminal Side), this Court has passed an order in the petition in Crl.OP(MD)No.2294 of 2022 granting bail to the petitioner. Thereafter, the learned Additional Public Prosecutor appearing for the respondent Police has made a mention on 07.02.2022 that by mistake bail order has been passed without noting that 550 grams Diazepam is a commercial quantity and my learned Predecessor Judge, after recording the submission made by the learned Additional Public Prosecutor and also the submission of the learned counsel for the petitioner that they will not execute the bail order, by observing that it is a mistake or error apparent on the face of record, has *suo motu* recalled the order dated 04.02.2022 and directed the Registry to list the matter before the concerned roster Judge for fresh hearing. In that way the above matter has been listed before this Court earlier.

b). After recalling of the bail order, the learned counsel for the petitioner has filed additional grounds for granting bail and the same are extracted hereunder:

* The petitioner surrendered before the special team attached with South Police Station, Thanjavur on 19.01.2022 at 01.10 pm, that thereafter, he was produced by the special team before the respondent Police at 02.30 pm, and that he was not at all arrested by the respondent Police on 19.01.2022 at 12.30 hours near Sevappamayakkanvari Periya Aatrupaalam in Thanjavur, as alleged by them.

* Since the very arrest itself has been disputed, the theory of following the mandatory provisions of NDPS Act will not arise.

* There are no materials to show that they have seized Dizepam in order to come to a conclusion that the alleged recovered material object is a Dizepam and since the theory of the arrest fails, the entire prosecution constructed on such arrest will fall into ground.

C). The learned Additional Public Prosecutor appearing for the respondent has filed counter affidavit disputing the additional grounds raised by the petitioner and further stated that there was no quarrel between the petitioner and the Police Officials, that it is a case detected through secret information received from informer and on surveillance, the petitioner was intercepted and contraband was recovered from him.

5. The petitioner, in the present bail application, has raised the pleas that the respondent Police has miserably failed to produce the CC TV footage to prove the alleged arrest theory, that the personal liberty of an individual cannot be taken lightly and the respondent Police has purposely and wantonly registered the case, falsely implicating the petitioner and that the respondent Police has failed to comply with the mandatory requirements contemplated



under the provisions of NDPS Act.

6.As rightly contended by the learned Additional Public Prosecutor, the petitioner has taken the very same pleas in his earlier application in Crl.O.P(MD)No.2294 of 2022 and this Court had dealt with those pleas elaborately and decided the same as against the petitioner.

7.The learned Senior Counsel appearing for the petitioner would submit that there is a change in circumstances of the petitioner's case as he suffered seizure disorder, while he was in prison and was admitted in Thanjavur Medical College Hospital on 14.02.2022 and after treatment of five days at Department of Neurology, he had been discharged on 19.02.2022, that the Doctors have noted that the petitioner have seizure disorder for 25 years and they have finally disclosed that he suffered Drug Withdrawal Seizure and that they have prescribed drugs, which includes T.phenytoin 100 mg 1-0-2; T.carbamazepine 200 mg 1-0-1; T.clobazam 10 mg 0-0-1 and that therefore, the present bail plea of the petitioner may be considered on his poor health condition.

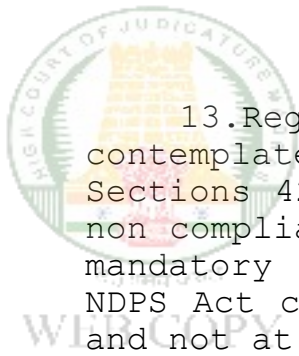
8.No doubt, as rightly contended by the learned Additional Public Prosecutor, during the enquiry in the earlier application, the petitioner's earlier counsel has produced the copies of the discharge summary and the medical prescription to show that the petitioner was given in-patient treatment for five days from 14.02.2022 to 19.02.2022 at Thanjavur Medical College Hospital for seizure disorder.

9.The learned Additional Public Prosecutor appearing for the State would submit that the petitioner was given proper treatment at the Neurology Department in Thanjavur Medical College Hospital and that the State would take care of his health condition.

10.The learned Senior Counsel appearing for the petitioner by showing the Schedule of substances under the NDPS Act has attempted to show that the drug prescribed for the petitioner ie., T.Clobazam also finds place along with Diazepam, which was allegedly seized from the petitioner.

11.No doubt, both the drugs T.Clobazam and Diazepam find place in the Schedule to the NDPS Act, But it is not the case of the petitioner that at the time of remand or at the time of filing of bail application before the jurisdictional Court or subsequently before this Court, that he was in possession of Diazepam for his own treatment. Even now in the present petition, there is no whisper that the petitioner was earlier prescribed with Diazepam and was using the same.

12.As rightly contended by the learned Additional Public Prosecutor, taking advantage of the drug now prescribed for the petitioner, the above contention is now being canvassed as an after



13.Regarding the non compliance of the mandatory requirements contemplated under the provisions of NDPS Act, particularly under Sections 42 and NDPS Act, 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.

14.No doubt, as rightly pointed out by the learned Senior counsel for the petitioner, this Court has specifically recorded a finding that the second condition contemplated under Section 37 of NDPS Act was satisfied and the said passage is extracted hereunder :

"25.In the case on hand even according to the prosecution, the petitioner is not having any previous case under the NDPS Act. It is not the case of the prosecution that the petitioner is having bad antecedents. Considering the above, this Court can very well observe that there are reasonable grounds to believe that the petitioner is not likely to commit such offence, after coming out on bail."

15.According to the prosecution, the entire contraband of commercial quantity of Diazepam along with 1.200 kgs of Ganja was recovered from the petitioner. This Court, in the earlier order has referred the decisions of Hon'ble Supreme Court reported in **(2020) 12 SCC 122** and **(2004) 3 Supreme Court Cases 549** and the relevant paragraph are reproduced hereunder:

"22.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.

"23.The Hon'ble Supreme Court while considering the scope of the expressions 'reasonable grounds', in State of Kerala and others Vs. Rajesh and others reported in (2020) 12 SCC 122, has observed that ;

"19. 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 non obstante 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.

21.The expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence...."

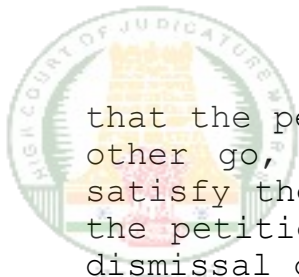
24.It is also necessary to refer the decision of Hon'ble Supreme Court in **Collector of Customs, New Delhi Vs. Ahmadaliev Nodira** reported in (2004) 3 Supreme Court Cases 549 :

"7....The satisfaction contemplated regarding the accused being not guilty has to be based for reasonable grounds. The expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence."

16.The petitioner in order to satisfy the first condition has to show something more than *prima facie* grounds and in the words of the Hon'ble Supreme Court, the accused has to show substantial probable cause for believing that he is not guilty of the alleged offence.

17.In case on hand, the petitioner has neither produced nor shown any materials to satisfy the existence of the *prima facie* grounds to doubt the prosecution case.

18. It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are conjunctive and not alternative. In the present case, since the petitioner is not having any previous case under the NDPS Act, this Court has already observed that the petitioner is not likely to commit such offence, after coming out on bail. But at the same time, since the entire contraband was recovered from the petitioner and the petitioner has not even shown any *prima facie* ground that there are reasonable grounds to believe



that the petitioner is not guilty of such offence, this Court has no other go, but to say that the petitioner has miserably failed to satisfy the first condition under Section 37 of NDPS Act. Moreover, the petitioner has not shown any change in circumstances, since the dismissal of the earlier application.

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19. Considering the above, this Court has no other option, but to dismiss the bail application of the petitioner.

20. In the result, the Criminal Original Petition is dismissed.

sd/-
05/05/2022

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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,
THANJAVUR WEST POLICE STATION,
THANJAVUR 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.7255 of 2022
Date : 05/05/2022

SA/SVR/SAR.2/17.05.2022/6P/4C