



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 27.04.2022
Delivered on : 05.05.2022

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL OP(MD). No.7243 of 2022

Balamurugan

... Petitioner/ Accused No.9

vs.

The State represented by
The Inspector of Police,
Rameswaram Town Police Station,
Rameswaram.
(Crime No.55 of 2022)

... Respondent/ Complainant

For Petitioner : Mr.ARL.Sundaresan, Senior counsel
for Mr.AL.Ganthimathi,
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.55 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.9, who was arrested and remanded to judicial custody on 11.02.2022 for the offences punishable under Sections 8(c) and 22(C) of Narcotic Drugs and Psychotropic Substances Act, 1985, altered into Sections 8(c) r/w 22(C), 23(C), 28 and 29 of NDPS Act, in Crime No.55 of 2022, seeks bail.

2.The case of the prosecution is that on 10.02.2022 at about 03.00 hours, on receiving a secret information, the respondent police had proceeded to Amma Park near Rameswaram Bus stand and at about 04.00 hours, on seeing the police party, eight persons had tried to escape from that place, that the respondent police had caught hold of five persons, while the remaining three persons had escaped from that place, that the respondent police has found that the said accused were in possession of 1.500 kgs of cocaine and that on that basis, the present FIR came to be registered.



3.It is the further case of the prosecution that on the basis of the confession said to have taken from the other accused, the petitioner and others were added and that the petitioner was arrested and remanded to judicial custody on 11.02.2022.

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4.The case of the petitioner is that no ingredients for the offences alleged under NDPS Act are made out against the petitioner, that there are several statutory violations in the entire process of registration of information, registration of the FIR, failure to search the accused in the presence of the Magistrate, the arrest of the accused, alleged recording of confession statement and remand of the petitioner, that the petitioner is innocent and he has not committed any offence as alleged by the prosecution and that he has been falsely implicated in the above case.

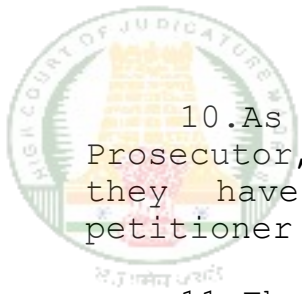
5.Admittedly, the petitioner was working as police constable with the Kaadalkudi Police Station at the relevant point of time.

6.The learned Additional Public Prosecutor would submit that the petitioner taking advantage of his service in the police department has not only given the money, but was also arranging various smuggling activities, that the confession of the accused 1, 8, 4, 9 and 10 have been shown that the accused were involved in various smuggling activities for a long time and involved in heinous offences, that the respondent police has reliably come to understanding that the accused were involved in the cocaine trade for a long time and they used to purchase the contraband through one contact from Erode and thereafter they smuggled it to Srilanka through sea for high rates and profits and that the present case involves 1.500 kgs of cocaine worth about Rs.90 lakhs.

7.He would further submit that the investigation revealed that the petitioner is the person, who is behind in all such illegal trade and he had not only funded the said crime of illegal cocaine smuggling, but instructing the other accused from his secret mobile number through Whatsapp contact, that the call details and Whatsapp messages that were obtained corroborate the confession statement and proves the serious involvement of the petitioner in various smuggling activities, that the investigation is in initial stage and that therefore the bail application of the petitioner is liable to be dismissed.

8.No doubt, as rightly pointed out by the learned counsel for the petitioner, there was no recovery from the petitioner and he was implicated only on the basis of the confession said to have taken from the co-accused.

9.It is not in dispute that the petitioner is not having any previous cases under NDPS Act.



10.As rightly contended by the learned Additional Public Prosecutor, though there was no direct recovery from the petitioner, they have collected materials and evidences to connect the petitioner with the crime in question.

11.The learned Additional Public Prosecutor would submit that they have collected the materials to show that the petitioner was in constant touch with the other accused through his secret mobile number and through Whatsapp contact and that the call details and Whatsapp messages that were obtained corroborate the confession statements and proves the serious involvement of the petitioner in the case on hand and other smuggling activities.

12.The learned Additional Public Prosecutor would further submit that the co-accused Suresh Kumar in his confession has specifically stated that he has saved the petitioner's secret number as Annice and that the other accused Sandhiya Diamond as Bro and that the petitioner had used secret number 8110992613. He would further submit that the petitioner had sent money to the co-accused for procuring the contraband.

13.The prosecution has also produced the CD file, wherein, they have collected the screen-shot of the Whatsapp message sent by the petitioner to the co-accused, that they have also gathered the call detail particulars to show that the petitioner had contacted the co-accused several times and they have also produced the bank statement maintained by the petitioner in State Bank of India to show that the petitioner had sent payments to the co-accused.

14.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."

15.It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative.

16.In the present case, as already pointed out, though the prosecution has alleged that the petitioner was involved in various smuggling activities including transportation of contraband, it is not their case that the petitioner is having previous cases under NDPS Act.

17.As rightly contended by the learned counsel for the petitioner, 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, though there was no recovery from the petitioner, the prosecution has gathered materials, which includes the call details and also the bank payment particulars, *prima facie* sufficient enough to proceed against the petitioner. Hence, this Court is of the view that the prosecution has shown a *prima facie* case as against the petitioner, but on the other hand, the petitioner has miserably failed to satisfy the first condition of Section 37 of NDPS Act.

18.Considering the above, this Court has no other option, but to dismiss the bail plea of the petitioner. Accordingly, this Criminal Original Petition is dismissed.

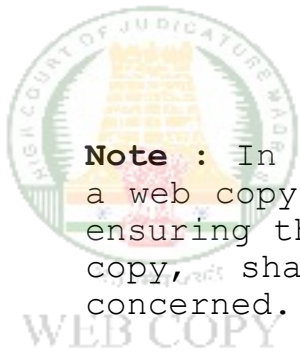
sd/-

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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
RAMESWARAM TOWN POLICE STATION, RAMESWARAM.

2 THE SUPERINTENDENT,
CENTRAL JAIL, TRICHY.

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

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-4494[I] dated
09/05/2022)

ORDER

IN

CRL OP(MD) No.7243 of 2022

Date :05/05/2022

SA/SVR/SAR.2/10.05.2022/5P/5C