



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 25/07/2022

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP(MD). No.7509 of 2022

Irudhaya Vas

... Petitioner/Accused No.1

Vs

The State rep.by,
The Inspector of Police,
NIB CID Police Station,
Thoothukudi District.
Crime No.7 of 2022.

... Respondent/Complainant

For Petitioner : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu, Advocate.

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

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

PRAYER :-For Bail in Crime No.7 of 2022 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner is facing charges under Sections 8(c), 22(C), 23 (C), 24, 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.7 of 2022 on the file of the respondent police.

2.The case of the prosecution in brief is as follows:-

3.On 20.12.2021 at about 09.00 pm., the Inspector of Police belongs to Q Branch received a secret information. On the basis of the aforesaid information, along with the police team, she conducted raid in Vembar Akkarai Beach. At that time, she found a boat beyond 100 meters of the seashore bearing Reg.No.IND TN 12 M 3851.

4.The police team went near the boat and at that time, all the accused persons tried to escape. They were apprehended and were found in possession of 10 kgs of Crystal Methamphetamine (ICE), 7 mobile phones, RC book of the boat etc., apart from cash. The



aforesaid contraband and others were seized in the presence of the Village Administrative Officers. Based upon the aforesaid occurrence, the aforesaid case was registered. The petitioner was arrested on 22.02.2022 and ever since he is in judicial custody.

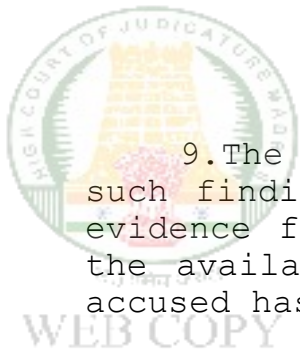
5. Seeking bail, this petition has been filed on very many grounds. Similar petition that was filed by this petitioner before the principal Special Court for EC and NDPS Act Cases, Madurai in Crl.M.P.No.467 of 2022 came to be dismissed on the ground that huge quantity of the contraband has been recovered from the joint possession of the petitioner and Section 37 of NDPS Act has not been complied with. Subsequent to the aforesaid dismissal order, this petition has been filed.

6. The learned Senior Counsel for the petitioner would straight away rely upon the factual grounds. According to him, as per the news items that appeared in the TV channel, the presence of this petitioner is not noticed. Only 7 persons were found to be arrested along with contraband, who were found in the boat. But the photographs show that 7 persons were found and they were apprehended. According to him, this news items clearly establish the fact that this petitioner is not involved in the aforesaid smuggling of contraband.

7. The learned Additional Public Prosecutor for the respondent submits that it is only a news item that appears in the news channel, over which no reliability or credence can be attached and for that purpose, he would rely upon the judgment of the Hon'ble Supreme Court that the news items in media can have no evidential value. But the learned Senior Counsel for the petitioner would submit that there is no *prima facie* ground is available to rope this petitioner in the offence.

8. The Hon'ble Supreme Court while dealing with the bail applications under the provisions of NDPS Act, more particularly in the light of Section 37 of NDPS Act, in Crl.A.Nos.1001 and 1002 of 2022 (**Narcotics Control Bureau Vs. Mohit Agarwal**) dated 19.07.2022, has observed as follows:-

"14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail."



9.The Hon'ble Supreme Court went on to say that while recording such finding, it is not necessary for the Court to appreciate the evidence for arriving at the conclusion. So, the focus must be on the availability of the reasonable grounds for believing that the accused has not committed the offence.

10.The learned Senior Counsel for the petitioner would stand on this point. So, according to him, only the credible evidence has been produced before this Court to show that there is reasonable ground to believe that the petitioner has not committed the offence, then he is entitled for bail.

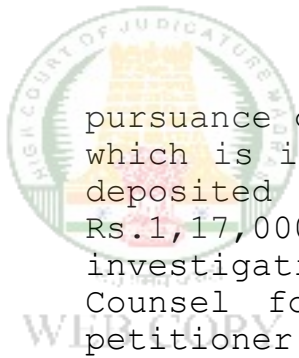
11.In that case, huge contraband has been recovered from the house of the petitioner. But the house was identified by the co-accused, based upon which only, huge quantity of the contraband has been recovered from the house of the petitioner. Even though counter statement of the aforesaid petitioner, which was recorded under Section 67 of NDPS Act, is not permissible and reliable, as per the judgment of the Hon'ble Supreme Court, the other circumstances have been brought into account, which were also relied to deny the bail.

12.The entire CD file has been called for and perused. As per the First Information Report, this petitioner was found along with other co-accused in the boat. He was also secured along with co-accused. It is further seen that all the 8 accused persons have been subjected to enquiry and they were given separate statement. They have been arrested on the spot itself and subsequent process was also undertaken.

13.Perusal of CD file also further shows that the petitioner has leased out the boat, which was standing in his father's name, to the co-accused for 1 year. It appears that during the aforesaid lease period only, the aforesaid occurrence said to have taken place.

14.It is further seen that the accused persons had a contact with the neighbouring country, namely Srilanka and they have smuggled the contraband to the country. During that process only, they have been apprehended. When there is official version with regard to arrest and recovery of contraband, while the petitioner was found along with co-accused, then the news report that appears in a channel may not have any supervening character. So, after arrest, the respondent filed a petition under Section 167 (2) Cr.P.C., seeking police custody and this petitioner was subjected to custodial interrogation and has given a statement that he is ready to identify the place, where the contraband was delivered to him and the place in the boat, where it was hidden.

15.CDR report has also been obtained to know about the contact. <https://www.mca.gov.in/judts> the contraband is stated to be more than Rs.20 Crores. In



pursuance of the disclosure statement of this petitioner, tl /, which is involved in the aforesaid smuggling of the contraband, was deposited in his account was also found. On 06.10.2021, a sum of Rs.1,17,000/- was deposited in his account. So, it is seen that the investigation is undergoing. In the meantime, the learned Senior Counsel for the petitioner would submit that the wife of this petitioner made a complaint on 17.03.2022.

16.The petitioner was secured from his house and against the Q Branch people, she made a complaint during August, 2021. He was also secured along with his brother on 20.02.2022 at about 08.00 pm., by the police, over which his brother sent a complaint in Ref.No.DDT22030349. Thereafter only, the aforesaid complaint has been registered. So, according to the learned counsel for the petitioner, on 20.02.2022 itself, the complaint has been given stating that this petitioner was taken by the respondent police. So, the occurrence said to have taken place at about 11.15 pm., on 20.02.2022 is unbelievable one. But from this fact alone, this Court cannot record the finding to the effect that the petitioner was not available along with co-accused, when contraband was recovered from the boat, which belongs to the father of this petitioner.

17.I find that the petitioner has not successfully discharged the burden under Section 37 of NDPS Act and if the petitioner is released on bail, there is every likelihood of absconding and tampering the evidence.

18.This Criminal Original Petition deserves to be dismissed and accordingly, dismissed.

sd/-

25/07/2022

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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
NIB CID POLICE STATION, THOOTHUKUDI 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.7509 of 2022

Date :25/07/2022