



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 14.06.2022
Delivered on : 17.06.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL OP (MD). Nos.7628, 8269 & 8318 of 2022

WEB COPY

Crl.O.P. (MD)No.7628 of 2022

Athistakumari

... Petitioner/Accused-11

Vs

State represented by
The Inspector of Police,
NIB-CID Police Station,
Nagapattinam.
(Crime No.21 of 2021)
(Nagapattinam Town P.S. Cr.No.623/2021)

... Respondent/Complainant

For Petitioner : Mr.K.Kumaravel,
Advocate.
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

Crl.O.P. (MD)No.8269 of 2022

Maran

... Petitioner/Accused-3 (A-10)

Vs

State represented by
The Inspector of Police,
NIB-CID Police Station,
Nagapattinam.
(Nagapattinam Town P.S. Cr.No.623/2021)

... Respondent/Complainant

For Petitioner : Mr.K.Kumaravel,
Advocate.
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

Crl.O.P. (MD)No.8318 of 2022

R.Mukesh Kumar @ Mukesh

... Petitioner/Accused No.1

Vs

State represented by
The Inspector of Police,
Nagapattinam Police Station,
Nagapattinam.
(Crime No.623 of 2021)

... Respondent/Complainant



For Petitioner : Mr.S.Ramsundarvijayraj,
Advocate.
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

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

COMMON PRAYER :-

For Bail in Crime No.21 of 2021 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioners/accused, who were arrested and remanded to judicial custody on 05.10.2021, 02.10.2021 and 01.08.2021 respectively for the offences punishable under Sections 8(c) r/w 20 (b)(ii)(C), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, in Crime No.21 of 2021, seek bail.

2.Admittedly, originally FIR came to be registered in Crime No.623 of 2021 on the file of the Nagapattinam Town Police Station and thereafter the case was transferred to NIB-CID Nagapattinam and FIR came to be registered in Crime No.21 of 2021 on the file of the NIB-CID Nagapattinam. The respondent has already laid a final report and the case was taken on file in C.C.No.16 of 2022 and is pending on the file of the Special Court for EC and NDPS Act Cases, Thanjavur.

3.The case of the prosecution is that on 31.07.2021 at about 03.00 hours, on receipt of secret information, the respondent police went to Oosi Matha Temple located at Nagapattinam Beach Road and at 17.00 hours, the respondent police team had intercepted one Innova car bearing Registration No.PY-01-CF-2777 and eight persons were in that car, that after following the mandatory procedures, the respondent police team conducted a search in the said car and found that the accused persons were found in illegal possession of 2 gunny bags of Ganja (each contain 45 kg of Ganja) and they have arrested the accused persons, that on the basis of the confession statement given by the accused Mukesh, other accused were added and that thereafter on the basis of the confession statement of the accused Maran, Arul Kumar was added as 15th accused.

4.The petitioners' case is that they are innocent and they have not committed any offence as alleged by the prosecution and that a false case has been foisted against them.

5.The learned counsel for the petitioners in Crl.O.P.(MD) Nos.7628 and 8269 of 2022 would submit that the petitioners were implicated only on the basis of the confession statement alleged to have taken from the co-accused, that the petitioners' name does not



find place in the FIR, that there was no recovery from the petitioners and that the petitioners are not having any previous cases under NDPS Act.

6.The learned Additional Public Prosecutor would submit that the first accused Mukesh Kumar @ Mukesh had stated in his confession that they acted as per the direction of the main accused Thendral @ Thendral Arasu S/o.Devadass, Maran S/o.Selvam, Athistakumari W/o.Manickam, Ramanan @ Udumbu Ramu S/o.Thennarasu and Anbuselvan @ Kushbu Anbuselvan S/o.Selvam, who followed them in another Scorpio car bearing Registration No.TN-59-AD-9797 and after seeing them being stopped by the police, the said accused, who came in Scorpio car got alert and fled away from that place and that he had also confessed that they have transported the ganja with an intention to smuggle the same to Srilanka.

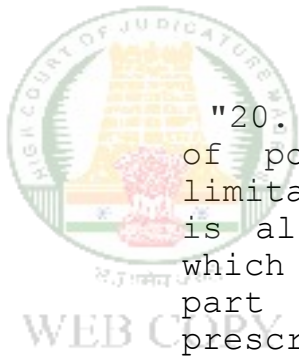
7.The learned counsel for the petitioner in Crl.O.P.(MD)No.8318 of 2022 would submit that the petitioner is in judicial custody for more than 240 days and is willing to produce the sufficient sureties for the appearance and he will not abscond and will not tamper the investigation and witnesses.

8.The learned Additional Public Prosecutor would submit that the petitioner Mukesh Kumar @ Mukesh in Crl.O.P.(MD)No.8318 of 2022 has been shown as the first accused, that the entire contraband of 90 kgs of ganja was recovered from him and other accused, that the said petitioner was arrested along with other six accused at the same place and that he had given voluntary confession accepting the transportation of contraband along with other accused.

9.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."

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

11.Though the prosecution has alleged that the petitioner Mukesh Kumar @ Mukesh was actively involved in the crime, it is not their case that the said petitioner is having previous cases under NDPS Act.

12.Since the petitioner in Crl.O.P.(MD)No.8318 of 2022 is not having any previous cases under NDPS Act, this Court can very well record a finding that the said petitioner is not likely to commit any such offence, after coming out on bail, but at the same time, since the entire contraband of commercial quantity was recovered from him and other accused and that the petitioner was arrested along with other six accused at the same place, this Court cannot record a finding that there are reasonable grounds for believing that the petitioner Mukesh Kumar @ Mukesh is not guilty of such offence.

13.Regarding the petitioners in Crl.O.P.(MD)Nos.7628 and 8269 of 2022, admittedly, there was no recovery of contraband from the said petitioners. Moreover, they were implicated only on the basis of the confession alleged to have taken from the co-accused. But according to the prosecution, the petitioner Maran is having 11 previous cases, which includes two cases under NDPS Act one in Crime No.503 of 2015 on the file of the Usilampatti Town Police Station and the second one in Crime No.72 of 2021 on the file of the TR Pattinam Police Station, Karaikkal District.

14.According to the prosecution, the petitioner Athistakumari is having 11 previous cases and all of them were under TNP Act and she is not having any previous cases under NDPS Act.



15.Regarding the petitioner Athistakumari, as already pointed out, except the confession statement of the co-accused, the prosecution has not produced any materials or evidence to link the said petitioner with the crime in question.

16.As already pointed out, the petitioner Athistakumari is not having any previous cases under NDPS Act.

17.Considering the above, this Court is satisfied that there are reasonable grounds for believing that the petitioner Athistakumari is not guilty of such offence and that she is not likely to commit any such offence, after coming out on bail, as contemplated under Section 37 of NDPS Act.

18.Regarding the petitioner Maran, as already pointed out, he was implicated only on the basis of the confession alleged to have taken from the co-accused, but at the same time, he is having two previous cases under NDPS Act. Hence, this Court cannot record a finding that he is not likely to commit any such offence, after coming out on bail.

19.Considering the above, this Court has no other option, but to dismiss the bail pleas of the petitioners in Crl.O.P.(MD)Nos.8269 and 8318 of 2022. But at the same time, this Court concludes that the petitioner in Crl.O.P.(MD)No.7628 of 2022 is entitled to be enlarged on bail. Hence, this Court is inclined to grant bail to the petitioner in Crl.O.P.(MD)No.7628 of 2022 subject to the following conditions:

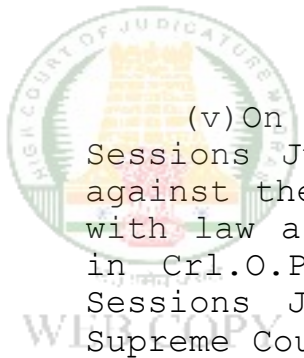
20.Accordingly, the petitioner in Crl.O.P.(MD)No.7628 of 2022 is ordered to be released on bail on her executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties each for a like sum to the satisfaction of the learned Additional District and Sessions Judge, Special Court under EC Act Cases, Thanjavur District.

(i)the sureties shall affix their photographs and left thumb impression in the surety bond and the Sessions Judge/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

(ii)the petitioner in Crl.O.P.(MD)No.7628 of 2022 shall report before the trial Court daily at 10.30 a.m., until further orders;

(iii)the petitioner in Crl.O.P.(MD)No.7628 of 2022 shall not tamper with evidence or witness;

(iv)the petitioner in Crl.O.P.(MD)No.7628 of 2022 shall not abscond during trial;



(v) On breach of any of the aforesaid conditions, the learned Sessions Judge/Trial Court is entitled to take appropriate action against the petitioner in Crl.O.P.(MD)No.7628 of 2022 in accordance with law as if the conditions have been imposed and the petitioner in Crl.O.P.(MD)No.7628 of 2022 released on bail by the learned Sessions Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***.

(vi) If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

19. Accordingly, these Criminal Original Petitions are dismissed as against the petitioners in Crl.O.P.(MD)Nos.8269 and 8318 of 2022.

sd/-

17/06/2022

/ TRUE COPY /

20/06/2022

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 ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SPECIAL COURT UNDER EC ACT CASES, THANJAVUR DISTRICT.
- 2 THE INSPECTOR OF POLICE, NIB-CID POLICE STATION,
NAGAPATTINAM.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
- 4 THE SUPERINTENDENT, CENTRAL JAIL (WOMEN), TRICHY.
- 5 THE SUPERINTENDENT, CENTRAL PRISON, NAGAPATTINAM.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 7 THE INSPECTOR OF POLICE, NAGAPATTINAM POLICE STATION,
NAGAPATTINAM.

+1 CC TO MR.K.KUMARAVEL, Advocate (SR-5774[I] dated 20.06.2022)

ORDER IN

CRL OP(MD). Nos.7628, 8269 & 8318 of 2022
Date :17/06/2022

RS/PN/SAR.1 (17.06.2022) 6P-9C