



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 05.07.2022
Delivered on : 08.07.2022
PRESENT

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The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.8407 of 2022

Pradeep

... Petitioner/ Accused No.4

vs.

State represented by
The Inspector of Police,
Karimedu Police Station, Madurai.
(Crime No.1466 of 2020)

... Respondent/ Complainant

For Petitioner : Mr.T.Lajapathi Roy, Advocate.
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

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

PRAYER :-For Bail in C.C.No.16 of 2021 on the file of the learned II Additional Special Sessions Judge for EC and NDPS Act Cases, Madurai.

ORDER : The Court made the following order :-

The petitioner/A.4 is facing a case for the offences punishable under Sections 8(c), 20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, in C.C.No.16 of 2021 on the file of the learned II Additional Special Sessions Judge for EC and NDPS Act Cases, Madurai, in Crime No.1466 of 2020, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 05.10.2020 at about 12.30 hours, on receiving a secret information, the respondent police intercepted three two wheelers bearing Registration Nos.TN-58-AC-4767, TN-58-BC-9390 and TN-58-AP-6669 driven by the accused persons in Arappalayam, Madurai and they were found in possession of 2 gunny bags with 11 kgs of ganja each, totally 22 kgs of ganja and that the respondent police arrested the accused and seized the contraband along with two wheelers and the cash. Hence, the complaint.

3.The petitioner's case is that he is innocent, that the allegations of the prosecution against him are entirely false and that he has not committed any offence as alleged by the prosecution and he has been falsely implicated in the above case with an intention to defame the petitioner.



4.It is not in dispute that the petitioner, who is shown as fourth accused, is the son of the third accused and brother of the fifth accused.

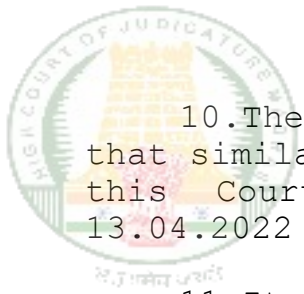
5.The learned counsel for the petitioner would submit that on 06.10.2020, the respondent called the third accused over phone and sought her to present near Mappillai Vinayagar Theatre for enquiry, that the third accused along with the petitioner went to that place, that the respondent enquired the third accused about the alleged smuggling of ganja, that the third accused informed him that her sons i.e., the petitioner and the fifth accused are doing ticket booking travels business in the name of P.R.Travels and ornamental fish aquarium business and hence, there is no necessity to smuggle ganja, that the respondent has then called the fifth accused over phone and asked him to come for an enquiry and that the respondent brought the petitioner and the accused 3 and 5 to the respondent police station and registered an FIR as if they smuggled ganja along with accused 1 and 2.

6.The learned counsel for the petitioner would further submit that the entire contraband was allegedly recovered from the first accused, that there was absolutely no recovery from the petitioner and his mother and brother, that the petitioner is not having any previous cases under NDPS Act, except the case registered under IPC offences, that the petitioner is in judicial custody from 06.10.2020 and that therefore the petitioner may be enlarged on bail.

7.The learned Additional Public Prosecutor would submit that the confession statement of the first accused Pandiammal reveals that all the accused colluded themselves and decided to purchase ganja with an intention to sell the same for higher price, that the petitioner drove the vehicle bearing Registration No.TN-58-AC-4767 and he only watched the movement of the police and intimated the same to the other accused, that all the accused persons were arrested in the occurrence place with possession of 22 kgs of ganja which is of commercial quantity and that therefore there is a specific bar under Section 37 of NDPS Act for granting bail to the accused, who has indulged in the alleged possession or transporting ganja of commercial quantity.

8.No doubt, the earlier application for bail filed by the petitioner in Crl.O.P.(MD)No.10240 of 2021 was ordered to be dismissed as withdrawn on 22.11.2021.

9.It is also not in dispute that the respondent police, after completing the investigation, has laid the final report and the same was taken on file in C.C.No.16 of 2021 and the same is pending on the file of the learned 2nd Additional District and Sessions Court/Special Court for NDPS Act Cases, Madurai.



10.The learned counsel for the petitioner would further state that similarly placed third accused has already been granted bail by this Court in Crl.O.P.(MD)No.4612 of 2022 vide order dated 13.04.2022 and produced the copy of the order.

11.It is evident from the said order, the learned Judge of this Court, by observing that the entire contraband has been recovered from the first accused alone, that there is no recovery from the third accused and also taking into consideration of the fact that final report has already been filed and was taken on file, has granted bail to the third accused.

12.As rightly pointed out by the learned counsel for the petitioner, in the charge sheet in para 10 regarding the details of the property recovered, the respondent police has listed out 10 items of property which includes contraband of ganja, two wheelers and cash of Rs.7,300/- and the same were shown to be recovered only from the accused Pandiammal/first accused.

13.Even according to the prosecution, the entire contraband of 22 kgs of ganja, three two wheelers and the cash were recovered only from the first accused and admittedly, there was no recovery from the present petitioner.

14.Moreover, as already pointed out, the respondent police has only recorded confession statement allegedly given by the first accused. Though the respondent has alleged that all the accused were arrested in the occurrence place with possession of 22 kgs of ganja, they have not chosen to elaborate anything further.

15.Even according to the prosecution, the petitioner is not having any previous cases under NDPS Act.

16.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."

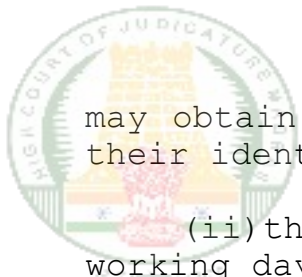
17. It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative.

18. Considering the above facts and circumstances of the case and also the facts that the entire contraband of 22 kgs of ganja involved in the present case was recovered from the first accused and there was no recovery from the petitioner, that the respondent police has not shown any other materials, except the confession statement alleged to have taken from the first accused, to connect the petitioner with the crime in question, that charge sheet has already been filed and the case is pending in C.C.No.16 of 2021 on the file of the learned 2nd Additional District and Sessions Court/Special Court for NDPS Act Cases, Madurai and that the petitioner is not having any previous cases under NDPS Act, this Court has no hesitation to hold that the petitioner has satisfied the twin conditions contemplated under Section 37 of NDPS Act. Hence, this Court concludes that the petitioner is entitled to be enlarged on bail.

19. In view of the above, this Court is inclined to grant bail to the petitioner subject to the following conditions:

20. Accordingly, the petitioner is ordered to be released on bail on his 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 II Additional Special Sessions Judge for NDPS Act Cases, Madurai.

(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 verify their identity;

(ii) the petitioner shall report before the trial Court on all working days at 10.30 a.m., until further orders;

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(iii) the petitioner shall not tamper with evidence or witness;

(iv) the petitioner 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 accordance with law as if the conditions have been imposed and the petitioner 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 / petitioner thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

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 II ADDITIONAL SPECIAL
SESSIONS JUDGE FOR EC AND NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
KARIMEDU POLICE STATION, MADURAI CITY.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to Mr.T.LAJAPATHI ROY Advocate SR.No.6866.

ORDER

IN

CRL OP(MD) No.8407 of 2022

Date :08/07/2022

CSM

MK/PN/SAR.III/11.07.2022/5P/6C

<https://www.mhc.tn.gov.in/judis>