



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 20.06.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.9947 of 2022

WEB COPY

M.Murugan

... Petitioner/Accused No.3

Vs

1. State through
The Inspector of Police,
NIB-CID (Narcotics Intelligence Bureau)
Dindigul Police Station,
Dindigul District.

2. The Inspector of Police,
Kannivadi Police Station,
Dindigul District.
(Crime No.30 of 2022)

... Respondents/Complainants

For Petitioner : Mr.S.Balasubramanian,
Advocate.

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

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

PRAYER :-

For Bail in Crime No.30 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.3, who was arrested and remanded to judicial custody on 30.01.2022 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act in Crime No.30 of 2022, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 30.01.2022 at about 06.15 hours, on receipt of secret information, the respondent police party conducted raid near Kurumbapati Pirivu, Karamadai to Karisal Patti road, that on seeing the police party, the petitioner and other accused attempted to run away from that place, but the respondent police nabbed the petitioner and other accused and found that they were in possession of 23.500 kgs of ganja and that the petitioner was arrested and the contraband was recovered.



3.No doubt, the earlier application for bail filed by the petitioner in Crl.O.P.(MD)No.6526 of 2022 was dismissed by this Court vide order dated 20.04.2022.

4.The learned counsel for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution and that a false case has been foisted against him.

5.The learned Additional Public Prosecutor would submit that the petitioner's earlier applications for bail in Crl.O.P.(MD) Nos.3931 and 6526 of 2022 were dismissed by this Court vide order dated 28.03.2022 and 20.04.2022 and that since the petitioner has not shown any change in circumstances, the petitioner is not entitled to be enlarged on bail.

6.It is pertinent to note that all the points and aspects now canvassed in the present petition have already been dealt with and this Court has dismissed the earlier application.

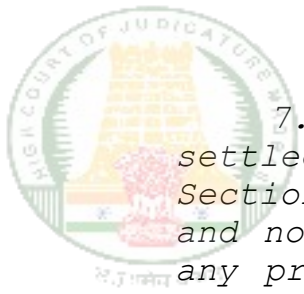
7.It is necessary to refer the following passages in the earlier order dated 20.04.2022,

3.The petitioners' case is that there is no nexus between the petitioners and the alleged occurrence, that the contraband was recovered from the first accused only, as evident from the seizure mahazar; that the second petitioner is the wife of the first accused and the first petitioner is the father-in-law of the first accused, that the petitioners are innocents and they have no connection with the alleged occurrence.

4.As rightly pointed out by the learned counsel for the petitioners, the contraband of 21.900 kgs of Ganja was recovered from the first accused Diwakar as evident from the seizure mahazar.

5.But the learned Additional Public Prosecutor appearing for the State would submit that the petitioners are very much available at the occurrence place and they were arrested along with the first accused and that the contraband was recovered at the place of occurrence.

6.As rightly pointed out by the learned Additional Public Prosecutor, this Court in earlier application in Crl.O.P.(MD)No.3931 of 2022 filed by the petitioners, has dealt with the above aspects and came to the decision that the second condition under Section 37 NDPS Act was satisfied, but they have failed to satisfy the first condition



7.As already pointed out in the earlier order, it is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative. Though the petitioners are not having any previous case under the NDPS Act, this Court can very well record a finding that the petitioners are not likely to commit any such offence, after coming out on bail. But at the same time, as already pointed out, the contraband of commercial quantity was recovered at the place of occurrence and that the petitioners were arrested along with the first accused, this Court cannot record a finding that the petitioners are not guilty of such offence as contemplated under Section 37 of NDPS Act.

8.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."



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

10. In the result, this Criminal Original Petition is dismissed.

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20/06/2022

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22/06/2022
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 INSPECTOR OF POLICE,
NB-CID (NARCOTIS INTELLIGENCE BUREAU),
DINDIGUL POLICE STATION, DINDIGUL DISTRICT.
2. THE INSPECTOR OF POLICE,
KANNIVADI POLICE STATION,
DINDIGUL DISTRICT.
3. THE OFFICER-INCHARGE,
DISTRICT PRISON, DINDIGUL.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.9947 of 2022
Date : 20/06/2022

CSM
USK/VR/SAR-IV/22.06.2022/4P/5C