



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

Date : 24.06.2022

PRESENT

The Hon`ble Mr.Justice **K.MURALI SHANKAR**

CRL OP(MD) . No.9971 of 2022

Alexpandi

...Petitioner/Sole Accused

Vs

The State represented by its
The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi District.
(Crime No.660 of 2021).

... Respondent/Complainant

For Petitioner : Mr.D.S.Haroon Rasheed,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.660 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/sole accused, who was arrested and remanded to judicial custody on 17.11.2021 for the offences punishable under Sections 8(c), 20(b)(ii)(c) and 25 of NDPS Act in Crime No.660 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 17.07.2021 at about 22.00 hours, on receipt of secret information, the respondent police went to Ettaiyapuram road and had intercepted one Ashok Leyland Mini Load bearing Registration No.TN-05-BW-4003, that on seeing the police party, the petitioner tried to escape from that place and the respondent police caught hold of him and that on search, it was found that the petitioner was in illegal possession of 24.100 kgs of Ganja and they have arrested him.



3.No doubt, the earlier application for bail filed by the petitioner was dismissed by this Court in Crl.O.P.(MD)No.4514 of 2022 vide order dated 07.04.2022.

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 the petitioner is not having any previous cases under NDPS Act.

5.The learned Additional Public Prosecutor would submit that the entire contraband of 24.100 kgs of Ganja was recovered from the petitioner.

6.The main contention of the petitioner is that the respondent police has not gathered any particulars about the owner of the vehicle, which was driven by the petitioner at the time of arrest and the alleged recovery.

7.Even assuming that the said vehicle is owned by some other person, since the entire contraband was recovered from the petitioner, the ownership of the vehicle has nothing to do with the alleged recovery and the alleged offence.

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

10.It is necessary to refer the observation of this Court made in the earlier order,

"5.Since the petitioner is not having any previous cases under NDPS Act, this Court can record a finding that the petitioner is not likely to commit any such offence, after coming out on bail. But at the same time, the entire contraband of commercial quantity was recovered from the petitioner, this Court cannot record a finding that the petitioner is not guilty of such offence.

6.since the first condition contemplated under Section 37 of NDPS Act is not satisfied, this Court has no other option, but to reject the bail plea. Hence, this Court is not inclined to grant bail to the petitioner."

11. 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/-

24/06/2022

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE INSPECTOR OF POLICE,
THOOTHUKUDI NORTH POLICE STATION,
THOOTHUKUDI DISTRICT.

2 THE OFFICER INCHARGE,
DISTRICT JAIL,
THOOTHUKUDI.

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

+1 CC to M/s.D.S.HAROON RASHEED, Advocate (SR-6169[I] dated
27/06/2022)

ORDER
IN
CRL OP(MD) No.9971 of 2022
Date :24/06/2022

csm
PKP/VR/SAR-4/28.06.2022/4P/5C