



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

Date : 05/07/2022

WEB COPY

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL OP(MD) . No.10588 of 2022

Suriya @ Yesu

... Petitioner/Accused No.3

Vs.

State rep.by
The Inspector of Police,
Thideer Nagar Police Station,
Madurai District.
(Crime No.222 of 2021)

...Respondent/Complainant

For Petitioner : M/s.Karthikeya C, Advocate.

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

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

PRAYER :-

To release the Petitioner/Accused on bail in CC.No.329 of 2021 on the file of the Principal Special Court for EC and NDPS Act,Madurai.

ORDER : The Court made the following order :-

The petitioner/Accused No.3 herein, who was arrested on 26.06.2021 for the alleged offence under Sections 8(c) r/w 20(b)(ii) (c)of NDPS Act, r/w Section 83(2) of the Juvenile Justice Act, 2015 in Crime No.222 of 2021, on the file of the respondent police and the same was taken on file as C.C.No.329 of 2021 on the file of the Principal Special Court for EC and NDPS Cases, Madurai, seeks bail.

2.The case against the petitioner is that he was found in joint possession of 24 kilograms of ganja and a case in Crime No.222 of 2021 was registered against the petitioner and others and the case was taken on file as C.C.No.329 of 2021 on the file of the Special Court for EC and NDPS Cases, Madurai. The petitioner was arrested and is in custody.



3.The petitioner has filed a petition in Crl.M.P.No.1114 of 2021 before the Special Court for bail. That petition was dismissed by the Special Court. Hence the petitioner has come forward with the present petition for bail. The earlier, bail petition filed by the petitioner before this Court in Crl.O.P.(MD)No.262 of 2022, the second bail petition in Crl.O.P.No.4781 of 2022 and the third bail petition in Crl.O.P.(MD)No.7439 of 2022 were dismissed on 07.01.2022, 17.03.2022 and on 29.04.2022 respectively.

4.On the side of the petitioner, it is stated that the petitioner is A3 in this case. There are 7 accused in total. Under Section 50 of the NDPS Act, it is mandatory for the prosecution to prove that the recovery was made from the accused in the presence of the Magistrate. All the contraband were recovered from the first accused and not from the petitioner. No confession statement was recorded from the petitioner and that the petitioner is having no previous case.

5. On the side of the petitioner, it is stated that even as per the case of the prosecution, there is no recovery from this petitioner, under Section 50 of the NDPS Act. Recovery was only from the co-accused. That recovery was not in the presence of either the Magistrate or the Gazetted officer. A judgment of the Hon'ble Supreme Court in Crl.A.No.273 of 2007 [Arif Khan @ Agha Khan V. State of Uttarkhand], dated 27.04.2018 is cited.

6.Another judgment of the Supreme Court reported in 2022-Livelaw-SC-167 is also cited. A similar order of the Punjab and Haryana High Court, in CRM.No.M-5043 of 2022 [Sajan Singh V. State of U.T.Chandigarh], dated 26.04.2022 is cited.

7.On the side of the petitioner, it is further stated that the co-accused has filed a bail petition before this Court and this Court has directed the case to be disposed of within a period of 5 months. But even after the completion of the five months, charge was not framed. There is no possibility of the case to be disposed of in the near future.

8. An order of the Himachal Pradesh High Court in Crl.M.P. (Main)No.780 of 2022 [Kuldeep Singh V. Unknown], dated 15.06.2022 is cited, wherein, it is stated as follows:-

"8. ... Section 37 of the Act clearly reveals that there is no complete bar for the Court to grant bail in the cases involving commercial quantity.

<https://www.mhc.tn.gov.in/judis> 9. ... The petitioner incarcerated in jail for an indefinite period during



trial, especially when nothing remains to be recovered from him"

9. An order of the Delhi High Court, Bail Application No.51 of 2022 [Mahes V. State (Govt. of NCT of Delhi)] , dated 08.02.2022, wherein, it is stated as follows:-

"6. Furthermore, it was submitted by the learned counsels that the applicant has been languishing in jail for more than 4 years as an under trial accused. So far, only two witnesses have been examined, therefore, there is no chance that the trial shall be concluded in near future."

10. On the side of the petitioner, it is further stated that the petitioner is not having any previous case similar in nature and under Section 37 of NDPS Act, various Courts have taken into consideration the merits of the case and the period of custody and has granted bail, even in cases involving commercial quantity. An Order of the High Court of Punjab and Hariyana in CRM.M.P.No.31715 of 2020 [Rajkumar @ Raju V. State of Punjab], dated 23.05.2022 is cited.

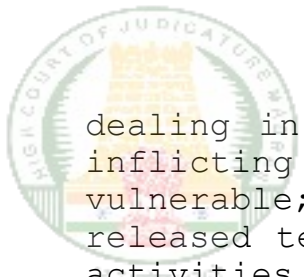
11. On the side of the petitioner, it is further stated that from whom the petitioner has purchased the contraband, was not explained by the prosecution. An order of the High Court of Himachal Pradesh in CrI.M.P.(Main)No.2277 of 2021 [Tarun Kumar V. Unknown], dated 04.01.2022, is cited and prayed the petitioner to be released on bail.

12. On the side of the prosecution, it is stated that before granting bail, the Court has to consider that there is any likelihood of commission of the any offence, while the accused is on bail. The petitioner herein is having two previous cases and there is every likelihood of the petitioner to involve himself in commission of further offences, while he is in bail.

13. Whether the procedure described has been followed and the requirement of Section 50 had been met, is a matter for trial. A judgment of the Hon'ble Supreme Court reported in 2011-1-SCC-609 [Vijaysinh Chandubha Jadeja V. State of Gujarat] is cited, wherein, the Hon'ble Supreme Court has held as follows:-

"Whether Section 50 of NDPS Act has been complied with is a matter of trial and no absolute formula can be laid down."

14. On the side of the prosecution, it is further stated that it should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are



dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of young innocent victims, who are vulnerable; they are a hazard to the Society; even if they are released temporarily, in all probability, they would continue their activities of trafficking. A judgment of the Hon'ble Supreme Court reported in 1999-9-SCC-429 [Union of India V. Ram Samujh and another] is cited.

15. On the side of the prosecution, it is stated that jail is the Rule and bail is the exemption, Clause (b) of Sub-Section(1) of Section 37 are an addition to the limitations provided under the Code of Criminal procedure or any other law, for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for. A judgment of the Hon'ble Supreme Court, reported in 2001-1-SCC-673 [State of M.P V. Kajad] is cited. Another judgment of the Hon'ble Supreme Court reported in 2009-2-SCC-624 [Union of India V. Rattan Mallik alias Habul] is cited.

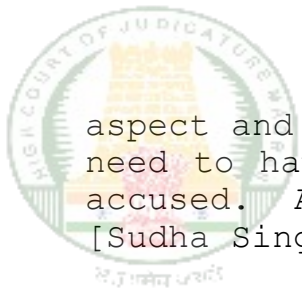
16. On the side of the petitioner, it is further stated that the contention that Section 42 of NDPS Act was not complied, can be raised only in the course of the trial. A judgment of the Hon'ble supreme Court reported in 2021-10-SCC-100 [Union of India V. Mohammed Nawaz Khan] is cited.

17. On the side of the prosecution, it is stated that non-compliance of Section 50 of NDPS Act may not vitiate the trial if it does not cause any prejudice to the accused. Whether there is adequate compliance with Section 42 is to be decided in each case and the above said position got strengthened with the amendment in Section 42 by Act 9 of 2001. A Judgment of the Hon'ble Supreme Court reported in 2009-8-SCC-539 [Karnail Singh V. State of Haryana] is cited.

18. On the side of the prosecution, it is stated that the Court has to consider the nature and gravity of the accusations; severity of the punishment; likelihood of repetition of the offence. A judgment of the Hon'ble supreme Court reported in 2010-14-SCC-496 [Prasanta Kumar Sarkar V. Ashis Chatterjee and another] is cited.

19. On the side of the prosecution, it is stated that the operative part of Section 37 of NDPS Act is in the negative form. The Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and there is a ban for granting bail. A judgment of the Hon'ble Supreme Court reported in 2020-12-SCC-122 [State of Kerala and others V. Rajesh and others] is cited.

20. On the side of the prosecution, it is stated that the petitioner is having 2 previous cases and the Hon'ble Supreme Court has held that when a stand was taken that the accused was a history sheeter, it was imperative for the High Courts to scrutinise every



aspect and the burden of the Court is heavy and it emphasise on the need to have a proper analysis of the criminal antecedents of the accused. A judgment of the Supreme Court reported in 2021-4-SCC-781 [Sudha Singh V. State of U.P.] is cited.

21. The petitioner is having previous case, therefore, the third limb of Section 37 of NDPS Act, is not fulfilled. There is no reasons to believe that the accused is not likely to commit any offence, while on bail and an order of this Court in Crl.O.P.No.568 of 2022 [Kalimuthu @ Vallakali @ Kali V. State rep. By the Inspector of Police], dated 11.04.2022, is cited.

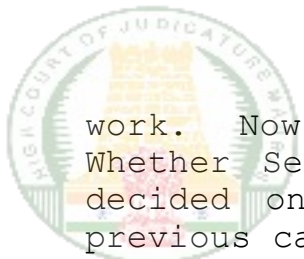
22. On the side of the prosecution, it is further stated that the Hon'ble Supreme Court had held that the provisions of Sections 52 and 57 are not mandatory. A judgment of the Supreme Court reported in 1994-3-SCC-299 is cited.

23. On the side of the petitioner, it is stated that the orders of the Hon'ble Supreme Court cited on the side of the respondent are not applicable to the facts of the present case. In the case reported in 1999-9-SCC-429, the Supreme Court set aside the bail, wherein, the bail bond was cancelled on convicting the accused and the facts of the case is not applicable to the facts of the present case.

24. On the side of the respondent, it is stated that the quantity of the contraband involved is commercial in nature. The petitioner is having two previous cases. The twin conditions under Section 37 of NDPS Act were not satisfied and prayed the petition to be dismissed.

25. On the side of the respondent, it is stated that totally 7 accused were involved in the case. Seven persons were arrived as accused in the First Information Report. The petitioner herein is arrayed as Accused No.3 in the First Information Report. Final report was filed on 28.07.2021 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(c) of NDPS Act, r/w Section 83(2) of the Juvenile Justice Act, 2015. The juvenile accused was released on bail under the Juvenile Justice Act and all the other accused are still in custody. All the procedures contemplated under Section 42, 50 and 52A and 57 of NDPS Act were duly complied with in this case. There are materials available against the petitioner. The bail application filed by the co-accused in Crl.O.P.(MD)Nos.400 and 401 of 2022 were dismissed by this Court on 12.01.2022 with a direction to dispose of the cases within a period of five months, after the resumption of normal work. The order was passed during the lock down period. There is no mitigating circumstances to consider the bail application and pray the petition to be dismissed.

26. It is seen that a bail petition filed by the co-accused was already dismissed, with a direction to dispose the case within a period of 5 months after the resumption of normal



work. Now, Charges were framed and the case is pending for trial. Whether Section 50 of the NDPS Act was properly followed can be decided only at the time of trial. The petitioner is having 2 previous cases.

27. The offence against the petitioner is serious in nature and considering the seriousness of the offence, considering the fact that the case is pending for trial, and considering the fact that there is a direction from this Court to dispose of the case within a short period, this Court is not inclined to allow the petition at the present stage.

28. Accordingly, this Criminal Original Petition stands dismissed. The Trial Court is directed to dispose of the case within a period of four months from the date of receipt of copy of this order.

Sd/-

05/07/2022

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

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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 PRINCIPAL SPECIAL JUDGE
FOR EC AND NDPS CASES, MADURAI.
2. THE INSPECTOR OF POLICE,
THIDEER NAGAR POLICE STATION,
MADURAI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO: THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.10588 of 2022

Date :05/07/2022