



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
RESERVED ON : 26/07/2022
DELIVERED ON : 27/07/2022
PRESENT

The Hon`ble Mr.Justice K.MURALISHANKAR
CRL OP(MD). No.11441 of 2022

WEB COPY

A.Vijayan

... Petitioner/Accused No.2

Vs

State Rep.by
The Inspector of Police,
Manur Police Station,
Tirunelveli District.
Cr.No.367 of 2020

... Respondent/Complainant

For Petitioner : Mr.S.P.Naveenkumar, Advocate
For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor

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

PRAYER :-

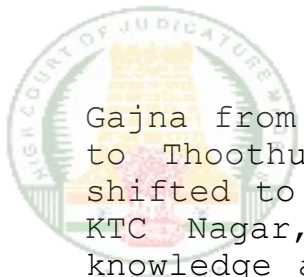
For Bail in Crime No.367 of 2020 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/A2, who was arrested and remanded to judicial custody on 29.07.2020 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act, in Crime No.367 of 2020, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 29.07.2020 at about 08.00 hours, on receipt of secret information, the respondent police was on patrolling duty at Madhavakurichi Vilakku and at that time, one Auto bearing Registration No.TN-72-AR-0201 was intercepted and on seeing the police party, the accused in the Auto had tried to escape, but the police apprehended them including the petitioner and that they have found seven plastic gunny bags containing 14kgs of Ganja. It is the further case of the prosecution that on the basis of the confession taken from the first accused, third accused was arrested subsequently and 8kgs of Ganja was recovered from him and thereby, 22kgs of Ganja was recovered in the present case.

3.The petitioner's case is that he is innocent, that he has not committed any offence as alleged and that he has been falsely implicated in the above case. It is the further case of the petitioner that the first accused was alleged to have purchased



Gajna from Vishakapattinam, Andhra Pradesh and transported the material to Thoothukudi in his vehicle and thereafter, the material was shifted to the petitioner's vehicle i.e. Auto for transportation to KTC Nagar, Tirunelveli, that the petitioner has absolutely no knowledge about the type of material that was being transported in his vehicle and that he was paid Rs.2,000/- as hire charges for transportation of the material.

4.It is not in dispute that the respondent after completing investigation, has laid the final report and that the case was taken on file in C.C.No.126 of 2020 and is pending on the file of the Special Court for NDPS Act Cases, Madurai.

5.The learned counsel for the petitioner would submit that A1 and A3 in their confession have specifically stated that the petitioner was engaged for transporting their material by fixing the Auto fair of Rs.2,000/- and that it is not the case of the co-accused that the petitioner was having knowledge about the transportation of Ganja through his vehicle. He would further submit that even assuming that the contraband was recovered from the petitioner's vehicle, even according to the prosecution they have recovered 14kgs of Ganja, which cannot be considered as a commercial quantity and that the prosecution, by alleging that they have subsequently recovered 8kgs of Ganja from the third accused, had been attempting to make out a case of transportation of commercial quantity. Admittedly, even according to the prosecution, 14kgs of Ganja was recovered from the petitioner's vehicle and it is not the case of the prosecution that the petitioner was known to the co-accused earlier and that he was also involved in the said case.

6.No doubt, the petitioner's earlier applications were ordered to be dismissed. It is also not in dispute that the petitioner's application in Crl.O.P.(MD)No.6624 of 2021 was ordered to be dismissed as the quantity involved is of commercial quantity and subsequently, in Crl.O.P.(MD)No.7988 of 2021, considering the submission made by the learned Additional Public Prosecutor, that the contraband recovered is of intermediate quantity and charge sheet has been laid, that application was dismissed by giving liberty to move the bail application before the trial Court.

7.The learned Additional Public Prosecutor would submit that the petitioner is not having any previous case under NDPS Act or under any other Act.

8.It is not in dispute that the petitioner is in custody from 29.07.2020 for the past two years. As rightly contended by the learned counsel for the petitioner, since the contraband, alleged to have been recovered from the petitioner's vehicle, is not of commercial quantity, the question of invoking Section 37 of NDPS Act does not arise.



9. Considering the above facts and circumstances and the facts that the petitioner is in custody from 29.07.2020, that investigation has already been completed and charge sheet was filed and the case is pending in C.C.No.126 of 2021 on the file of the Special Court for NDPS Act Cases, Madurai and that the petitioner is not having any previous cases, this Court is inclined to grant bail to the petitioner subject to the following conditions:

10. 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 I Additional District Court cum Special Court for NDPS Act Cases, Madurai.

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

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

(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 Magistrate/Special 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 Magistrate/Special 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 absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

27/07/2022

/ TRUE COPY /

27/07/2022

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 I ADDITIONAL DISTRICT JUDGE CUM
SPECIAL COURT FOR NDPS ACT CASES, MADURAI.

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



2 THE INSPECTOR OF POLICE, MANUR POLICE STATION,
TIRUNELVELI DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

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

ORDER

IN

CRL OP(MD) No.11441 of 2022

Date :27/07/2022

RS/VR/SAR.4 (27.07.2022) 4P-5C