



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 08/04/2022
PRESENT

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The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL OP(MD). No.10545 of 2021

1.Valaipala Sittappa @ Sivakumar

2.Manikandan ... Petitioners/Accused

Vs

The State represented by
The Inspector of Police,
Keeraithurai Police Station,
Madurai District.

(Crime No.1075 of 2020). ... Respondent/Complainant

For Petitioners : Mr.K.Sevugaraja,
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in Crime No.1075 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/accused, who apprehend arrest at the hands of the respondent police for the offences punishable under Section 8(c) r/w 20(b)(ii)(C) and 29(1) of NDPS Act, in Cr.No.1075 of 2020, seek anticipatory bail.

2.The case of the prosecution is that on receiving secret information, 27.09.2020 at about 15.00 hours, the Police party visited the occurrence place, wherein they found that the petitioners and the other accused were in possession of Ganja weighing 30 kgs, on seeing the Police party the accused persons tried to run away. Hence, the present complaint.

3.The learned counsel for the petitioners would submit that there was no recovery from the petitioners and that the petitioners were implicated only on the basis of the confession statement alleged to have taken from the co-accused.



4.The learned Additional Public Prosecutor would submit that the petitioners were implicated only on the basis of the confession statement given by the co-accused and that the first petitioner is having five previous cases under NDPS Act and that the second petitioner is having one previous case under the NDPS Act.

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5.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."

6.It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative. Since the petitioners are having previous cases under the NDPS act, this Court cannot record a finding that the



petitioners are not likely to commit any such offence, after coming out on bail. Hence, this Court has no other option, but to dismiss the anticipatory bail application.

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

sd/-

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Sub-Assistant Registrar (C.S.)
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 INSPECTOR OF POLICE
KEERAITHURAI POLICE STATION
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.10545 of 2021
Date :08/04/2022

SS/VR/SAR:II/19.04.2022 : 3P/3C