



WEB COPY

Crl.OP(MD)



22

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

Dated: 03/08/2022

PRESENT

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)No.11862 of 2022

1.A.Prabakaran

2.M.Sudhanraj

: Petitioners/A3,A5

Vs.

State represented by
The Sub Inspector of Police,
NIB-CID, Nagapattinam,
Crime No.06 of 2022.
(Velapalayam P.S.
Crime No.33 of 2022)

: Respondent/Complainant

For Petitioners : Mr.A.Senthil Kumar,
Advocate.

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

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

PRAYER :-For Bail in Crime No.33 of 2021 on the file of the
Respondent Police.

ORDER : The Court made the following order :-

The petitioners, who are arrayed as A3 and A5 were arrested, on 18/01/2022 and remanded to judicial custody for the alleged offences punishable under sections 8(c) r/w 20(b), (ii) (C) and 25 of the NDPS Act, in Crime No.33 of 2022, seek bail.

2.The case of the prosecution is that on 18/01/2022 the de-facto complainant, on a secrete information along with the police team were on looking for suspect near Bharathidhasan University. At that time, two vehicles came from the south direction. Both the vehicles were intercepted. Totally, eight persons were in occupation of the above said two vehicles. On enquiry, they disclosed their names. They were searched. A Car bearing registration No.KL-01-BW-1491 was found carrying ganja measuring about 167 kgs. Further



process was undertaken and all the accused persons were arrested on the spot itself and remanded to judicial custody.

3.The learned Additional Public Prosecutor would submit that the petitioners are the residents of Kodiakkarai intended to purchase the contraband and for that purpose only travelling in another vehicle.

4. Seeking bail, A3 and A5 moved this petition on the ground that there was no recovery in the vehicle, which was occupied by them, but in the another vehicle. So according to the petitioners, they are not responsible.

5.The learned Additional Public Prosecutor would submit that these petitioners were following the above said Car namely KL-01-BW-1431 in the vehicle bearing registration No.AP-31-BY-1287 for the purpose of purchasing the above said contraband from the co-accused persons, who were travelling in the Car bearing registration No.KL-01-BW-1431.

6.Now the learned counsel appearing for the petitioners would submit that if really their intention was to purchase the contraband from the above said co-accused persons, they would have purchased the same, either at the place where it was taken or in the midway and they need not follow the above said Car for purchasing the same. But however, it is seen that reason for the petitioners to follow the above said Car is not properly explained by them.

7.No doubt that there is a suspicion on the side of the prosecution that the petitioners might have intended to purchase the contraband from the co-accused. So preparation and attempt to purchase are punishable. But even to show the attempt to purchase, no materials have been collected so far, either in the form of CDRs, advance payments, etc. Except the confession of the co-accused, no other material is available.

8.Even though the reason assigned by the petitioners to follow the above said Car is not explained, but as stated earlier, a logical and reasonable argument has been advanced by the learned counsel appearing for the petitioners to the effect that if really they have intended to purchase the same, they would have purchased it, either at the point of collection or midway. So the circumstance, according to the petitioners is sufficient enough to satisfy the requirement of section 37 of the NDPS Act.

9.Even though, it is the contention on the part of the prosecution to the effect that that joint possession must be construed, but I am afraid that such joint possession theory can be adopted and extended to these petitioners. As mentioned earlier, they were not travelling in the Car, in which the contraband was



10.As mentioned above, preparation to purchase the contraband itself is punishable. But whether towards accomplishing the intention to purchase where any first step was taken by the petitioners is a matter for investigation and trial. As mentioned earlier, the best possible evidence that can be made available to this court is at present is CDR details. But as mentioned earlier, even after a lapse of seven months, no details have been collected. No materials have been collected to show the offer price or acceptance price and whether the price was paid is also not clear on record.

11.In the facts and circumstances of the case and also considering the duration of the custody of the petitioners, they can be enlarged on bail on condition that they must stay at Nagapattinam and appear before the respondent police and cooperate with him to complete the process of investigation. If during the course of investigation, if any material is collected to show the involvement of the petitioners, in the above said offence or any bad antecedents or materials are collected, then the respondent police is at liberty to file an application for cancellation of bail.

12.In view of the above facts and circumstances of the case, this court is inclined to grant bail to the petitioners with certain conditions. Accordingly, the petitioners are ordered to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Additional District and Sessions Judge, Presiding Officer and Special Court for EC Act case, Thanjavur and on further condition that the petitioners must stay at Nagapattinam and shall report before the respondent police daily at 10.30 am until further orders.

sd/-

03/08/2022

/ TRUE COPY /

05/08/2022

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 ADDITIONAL DISTRICT AND SESSIONS JUDGE,
PRESIDING OFFICER AND
SPECIAL COURT FOR E.C.ACT CASES, THANJAVUR.

2 THE SUB INSPECTOR OF POLICE
NIB-CID, NAGAPATTINAM,
(VELAPALAYAM POLICE STATION,

3 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

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

ORDER

IN

CRL OP(MD) No.11862 of 2022

Date :03/08/2022

ER

MK/VR/SAR.I/05.08.2022/2P/5C