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Crl.O.P.(MD)N



22

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.MURALI SHANKAR

CRL OP (MD) . Nos.12698 & 12994 of 2022

R.Mukeshkumar @ Mukesh
Maran

... Petitioner/Accused No.1
in Crl.O.P. (MD)No.12698 of 2022

... Petitioner/Accused No.3 (A-10)
in Crl OP (MD)No.12994 of 2022

Vs

State represented by
The Inspector of Police,
Nagapattinam Police Station,
Nagapattinam.
(Crime No.623 of 2021)

... Respondent/ Complainant
in Crl.O.P. (MD)No.12698 of 2022

State represented by
The Inspector of Police,
NIB-CID Police Station,
Nagapattinam.
(Crime No.21 of 2021)
(Nagapattinam Town Police Station
Crime No.623 of 2021)

... Respondent/ Complainant
in Crl OP (MD)No.12994 of 2022

For Petitioner : Mr.S.Ramsundarvijayraj, Advocate.
in Crl.O.P. (MD)No.12698 of 2022
Mr.K.Kumaravel, Advocate.
in Crl OP (MD)No.12994 of 2022

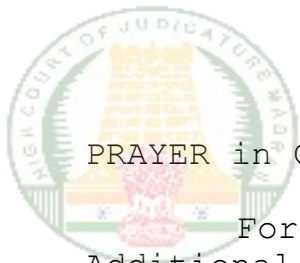
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

PETITIONS FOR BAIL Under Section 439 of Cr.P.C.

PRAYER in Crl.O.P. (MD)No.12698 of 2022:-

For Bail in Crime No.623 of 2021 on the file of the Respondent
Police.

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



PRAYER in Crl.O.P.(MD)No.12994 of 2022:-

For Bail in C.C.No.16 of 2022 on the file of the learned Additional District and Sessions Judge/Special Court for EC Act Cases, Thanjavur, in Crime No.21 of 2021 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

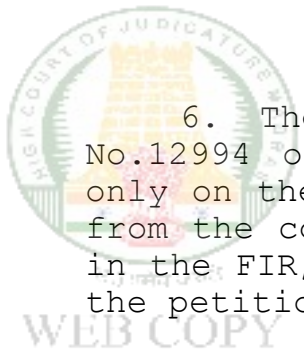
The petitioner in Crl.O.P.(MD)No.12698 of 2022/A.1, who was arrested and remanded to judicial custody on 01.08.2021 for the offences punishable under Sections 8(C) r/w 20(b)(ii)(C), 25 and 29 (1) of Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.623 of 2021, seeks bail.

2. The petitioner in Crl.O.P.(MD)No.12994 of 2022/A.3 is facing a case for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 29(1) and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985, in C.C.No.16 of 2022 on the file of the learned Additional District and Sessions Judge/Special Court for EC Act Cases, Thanjavur, in Crime No.21 of 2021, on the file of the respondent police, seeks bail.

3. Admittedly, originally FIR came to be registered in Crime No.623 of 2021 on the file of the Nagapattinam Town Police Station, thereafter the case was transferred to NIB-CID Nagapattinam and FIR came to be registered in Crime No.21 of 2021 on the file of the NIB-CID Nagapattinam and that the respondent has already laid a final report and the case was taken on file in C.C.No.16 of 2022 and is pending on the file of the Special Court for EC and NDPS Act Cases, Thanjavur.

4. The case of the prosecution is that on 31.07.2021 at about 03.00 hours, on receipt of secret information, the respondent police went to Oosi Matha Temple located at Nagapattinam Beach Road and at 17.00 hours, the respondent police team had intercepted one Innova car bearing Registration No.PY-01-CF-2777 and eight persons were in that car, that after following the mandatory procedures, the respondent police team conducted a search in the said car and found that the accused persons were found in illegal possession of 2 gunny bags of Ganja (each contain 45 kg of Ganja) and they have arrested the accused persons, that on the basis of the confession statement given by the accused Mukesh, other accused were added and that thereafter on the basis of the confession statement of the accused Maran, Arul Kumar was added as 15th accused.

5. The petitioners' case is that they are innocent and they have not committed any offence as alleged by the prosecution and that a false case has been foisted against them.



6. The learned counsel for the petitioner in Crl No.12994 of 2022 would submit that the petitioner was implicated only on the basis of the confession statement alleged to have taken from the co-accused, that the petitioner's name does not find place in the FIR, that there was no recovery from the petitioner and that the petitioner is not having any previous cases under NDPS Act.

7. The learned Additional Public Prosecutor would submit that the first accused Mukesh Kumar @ Mukesh had stated in his confession that they acted as per the direction of the main accused Thendral @ Thendral Arasu S/o.Devadass, Maran S/o.Selvam, Athistakumari W/o.Manickam, Ramanan @ Udumbu Ramu S/o.Thennarasu and Anbuselvan @ Kushbu Anbuselvan S/o.Selvam, who followed them in another Scorpio car bearing Registration No.TN-59-AD-9797 and after seeing them being stopped by the police, the said accused, who came in Scorpio car got alert and fled away from that place and that he had also confessed that they have transported the ganja with an intention to smuggle the same to Srilanka.

8. The learned Additional Public Prosecutor would submit that the petitioner Mukesh Kumar @ Mukesh in Crl.O.P.(MD)No.12698 of 2022 has been shown as the first accused, that the entire contraband of 90 kgs of ganja was recovered from him and other accused, that the said petitioner was arrested along with other six accused at the same place and that he had given voluntary confession accepting the transportation of contraband along with other accused.

9. No doubt, the petitioners' earlier application in Crl.O.P. (MD)Nos.8269 and 8318 of 2022 were dismissed by this Court vide common order dated 17.06.2022.

10. It is necessary to refer the following passages in the earlier order,

"9. 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."

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

11. Though the prosecution has alleged that the petitioner Mukesh Kumar @ Mukesh was actively involved in the crime, it is not their case that the said petitioner is having previous cases under NDPS Act.

12. Since the petitioner Mukesh Kumar @ Mukesh is not having any previous cases under NDPS Act, this Court can very well record a finding that the said petitioner is not likely to commit any such offence, after coming out on bail, but at the same time, since the entire contraband of commercial quantity was recovered from him and other accused and that the petitioner was arrested along with other six accused at the same place, this Court cannot record a finding that there are reasonable grounds for believing that the petitioner Mukesh Kumar @ Mukesh is not guilty of such offence.

13. Regarding the petitioner Maran and accused Athistakumari, admittedly, there was no recovery of contraband from the them. Moreover, they were implicated only on the basis of the confession alleged to have taken from the co-accused. But according to the prosecution, the petitioner Maran is having 11 previous cases, which includes two cases under NDPS Act one in Crime No.503 of 2015 on the file of the Usilampatti Town Police Station and the second one in Crime No. 72 of 2021 on the file of the TR Pattinam Police Station,



Karaikkal District.

18. Regarding the petitioner Maran, as already pointed out, he was implicated only on the basis of the confession alleged to have taken from the co-accused, but at the same time, he is having two previous cases under NDPS Act. Hence, this Court cannot record a finding that he is not likely to commit any such offence, after coming out on bail."

11. Considering the above and also the facts that the petitioners have failed to satisfy the twin conditions contemplated under Section 37 of NDPS Act conjunctively and that there is no change in circumstances, since the dismissal of the earlier petitions, this Court is not inclined to grant bail to the petitioners.

12. In the result, these Criminal Original Petitions are dismissed.

sd/-
27/07/2022

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/08/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

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
NAGAPATTINAM POLICE STATION,
NAGAPATTINAM.
- 2 THE INSPECTOR OF POLICE
NIB, CID POLICE STATION,
NAGAPATTINAM,
(NAGAPATTINAM TOWN POLICE STATION)
- 3 THE OFFICER INCHARGE
CENTRAL PRISON, NAGAPATTINAM.



4 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY.

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

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+1 CC to M/s.S.RAMSUNDARVIJAYRAJ, Advocate (SR-7804[I] dated
28/07/2022)

ORDER
IN
CRL OP (MD) .Nos.12698
& 12994 of 2022
Date :27/07/2022

PKP/SVR/SAR-2/01.08.2022/6P/7C