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

Date : 19.10.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . Nos.14144 & 14145 of 2022

Veerakumar	... Petitioner/Accused No.11 (Crl.O.P. (MD) No.14144/2022)
Sukumar	... Petitioner/Accused No.12 (Crl.O.P. (MD) No.14145/2022)

Vs

State rep.by The Inspector of Police, Nagapattinam NIB CID Police Station, Nagapattinam District. (Crime No.21 of 2021)	... Respondent/Complainant (in both Petitions)
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In both Petitions:

For Petitioner : Mr.K.R.Manimaran, Advocate.

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

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

COMMON PRAYER :-

For Bail in Crime No.21 of 2021 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioners/A.11 & A.12, who were arrested and remanded to judicial custody on 31.07.2021 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, in Crime No.21 of 2021, seek bail.



2. Admittedly, originally FIR came to be registered in Crime No.623 of 2021 on the file of the Nagapattinam Town Police Station and 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. 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.

3. 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.

4. 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.

5. The learned Additional Public Prosecutor would submit that since the petitioners have not shown any change in circumstances, they are not entitled to be enlarged on bail.

6. No doubt, the earlier applications for bail filed by the petitioners in Crl.O.P.(MD)Nos.9939 and 9940 of 2022 were dismissed by this Court vide common order dated 17.06.2022.

7. The learned counsel appearing for the petitioner has raised points and aspects in the present petitions, which were already dealt with by this Court and while rejecting the bail applications, this Court referred the following passages in the earlier common order dated 22.04.2022,

"9.The learned Additional Public Prosecutor would submit that the accused 11 and 12 were arrested at the occurrence place along with other accused and that the contraband of 90 kgs of Ganja was recovered from the car, in which, eight accused were travelling including the accused 11 and 12. He would further submit that the accused 2 and 6 were added, on the basis of the confession of the co-accused, that they



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were actively involved in the transportation and selling of Ganja and that since the charge sheet has already been filed, the petitioners may be directed to face the trial.

10. This Court, in batch of cases in **CrI.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."

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

12. In the present case, the learned Additional Public Prosecutor would fairly concede that the accused 6, 11 and 12 are not having any previous cases under NDPS Act, but according to him, the second accused is having two previous cases in Crime Nos. 1517 of 2020 and 1490 of 2020 on the file of the Vellipalayam Police Station under NDPS Act.

13. Since the accused 11 and 12 are not having any previous cases under NDPS Act, this Court can very well record a finding that the said accused are not likely to commit any such offence, after coming out on bail, but at the same time, as already pointed out, the contraband of commercial quantity was recovered from the car, in which, eight accused including the accused 11 and 12 were travelling at that time and that the said accused were arrested along with other six accused, this Court cannot record a finding that the said accused are not guilty of such offence."

8. Admittedly, the petitioners were very much available in the car and from that car contraband of 90 kgs was recovered and that they were arrested along with co-accused. Hence, this Court cannot record a finding that the petitioners are not guilty of such offence.

9. Since the first condition contemplated under Section 37 of NDPS Act is not satisfied, this Court has no other option, but to reject the bail pleas. Hence, this Court is not inclined to grant bail to the petitioners.

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

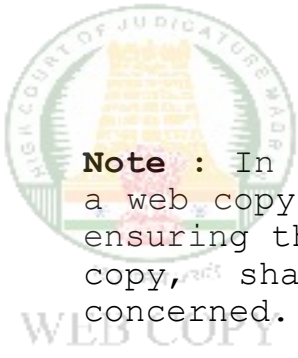
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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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 INSPECTOR OF POLICE,
NAGAPATTINAM NIB CID POLICE STATION,
NAGAPATTINAM DISTRICT.
2. THE OFFICER INCHARGE,
DISTRICT PRISON, NAGAPATTINAM.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP (MD) . Nos.14144
& 14145 of 2022
Date :19/10/2022

SP/GB/SAR /27/10/2022/5P/4C