



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
RESERVED ON : 16.09.2022
PRONOUNCED ON : 21.09.2022

PRESENT

WEB COPY

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.14850 of 2022

T.Venkatesh

... Petitioner/Accused No.6

Vs

The State represented by
The Inspector of Police,
Munnerpallam Police Station,
Tirunelveli District.
(Crime No.526 of 2020)

... Respondent/Complainant

For Petitioner : Mr.M.Jegadeesh Pandian, Advocate
for Mr.NA.Manimaran, Advocate
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

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

PRAYER :-

For Bail in C.C.No.147 of 2021 on the file of the 1st Additional Special District Court for NDPS Act Cases, Madurai, in Crime No.526 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.6, who is facing a case for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances Act, in C.C.No.147 of 2021 on the file of the 1st Additional Special District Court for NDPS Act Cases, Madurai, in Crime No.526 of 2020 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 09.09.2020 at 15.00 hours, the police party conducted vehicle checkup opposite to Sengulam Rahul Hotel and near Joes Suresh College. On seeing the police, two persons who came by motorcycle tried to escape from the place. But the police nabbed both of them. Five persons came by a car following the motorcycle. Three occupants of the car escaped and two were nabbed. They found 9 pockets of Ganja in car and one pocket of Ganja in motorcycle. 10 packs of Ganja each weighing 2.1



kgs and totally 21 kgs contraband were seized from them. He present case has been registered.

3. The learned counsel for the petitioner would submit that the respondent police has not at all taken any steps to witness the documents through independent witnesses, that the respondent has not at all followed the mandatory provision under Section 50(6) of the NDPS Act, that they have also not followed the mandatory provision under Section 52(A) of the NDPS Act, that the respondent police has produced the contraband before the trial Court on 29.01.2021 and that they have not offered any explanation for the delay.

4. The learned Additional Public Prosecutor would submit that the respondent police had intercepted the two wheeler bearing Registration No.TN-72-BF-2363, which was driven by the petitioner along with the seventh accused and that following the two wheeler, a car bearing Registration No.TN-05-AP-7270, which was driven by the first accused accompanied by four persons, was also intercepted, that the respondent police arrested the accused 4 to 7 and others had escaped from that place and that they have seized 21 kgs of Ganja from two vehicles. He would further submit that the petitioner, who drove the two wheeler was arrested at the scene of occurrence along with three other accused and contraband of 21 kgs was recovered from them.

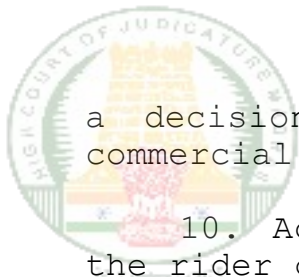
5. It is not in dispute that the respondent police after completing investigation, has laid the final report and the case was taken on file in C.C.No.147 of 2021 and the same is pending on the file of the Special Court for NDPS Act Cases, Madurai.

6. Regarding the non-following of the mandatory procedures alleged by the petitioner, the compliance or non-compliance; adequate compliance or substantial compliance of the mandatory procedures contemplated under Sections 42 and 50 of the NDPS Act can only be gone into and decided only at the Trial stage and not at the Bail stage. Hence, the arguments advanced by the learned counsel for the petitioner in this regard, cannot be gone into, in the present application.

7. No doubt, the petitioner's earlier applications for bail were dismissed, lastly in Crl.O.P.(MD)No.1251 of 2022 vide order dated 29.03.2022.

8. The learned counsel for the petitioner would submit that similarly placed seventh accused was granted bail by this Court in Crl.O.P.(MD)No.5113 of 2022 vide order dated 13.04.2022.

9. The learned counsel for the petitioner would further submit that in the said order, the learned Judge of this Court, by taking note of the fact that 2.1 kgs of Ganja was recovered from the two wheeler and 19 kgs of Ganja was recovered from the car, has come to



a decision that the quantity recovered cannot be termed a commercial quantity, granted bail to the seventh accused.

10. According to the prosecution, the present petitioner was the rider of the two wheeler and the seventh accused was the pillion rider and after intercepting the motorcycle and the car, they have recovered 2.1 kgs of Ganja from the motorcycle and 19 kgs of Ganja from the car.

11. As rightly contended by the learned counsel for the petitioner, though the prosecution has alleged that the two wheeler was followed by the car and after interception, some of the accused had escaped from the place and some of them including the present petitioner were arrested, they have not produced any materials to show that there existed connection between the two vehicles and between the persons travelled in the two wheeler are the inmates of the car.

12. As already pointed out, 2.1 kgs of Ganja was only recovered from the petitioner.

13. In the case on hand, it is the specific case of the prosecution that the petitioner is not having any previous cases under the NDPS Act.

14. As already pointed out, since the prosecution has recovered only 2.1 kgs of Ganja from the petitioner, the same cannot be considered as commercial quantity.

15. Considering the above facts and circumstances and also the fact that the petitioner is not having any previous cases under the NDPS Act and also taking note of the facts that the petitioner is in custody from 09.09.2020, that the co-accused were already granted bail by this Court and that charge sheet has been filed and the case is pending in C.C.No.147 of 2021 on the file of the Special Court for NDPS Act cases, Madurai, this Court is inclined to grant bail to the petitioner subject to the following conditions:

16. 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 Principal Special Court for EC & NDPS Act Cases, Madurai.

(i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned 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 a.m., until further orders;



- (iii) the petitioner shall not tamper with evidence or w
(iv) the petitioner shall not abscond during trial;
(v) On breach of any of the aforesaid conditions, the learned Magistrate/Trial 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/Trial 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 abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-
21/09/2022

/ TRUE COPY /

21/09/2022
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 PRINCIPAL SPECIAL JUDGE,
SPECIAL COURT FOR EC & NDPS ACT CASES,
MADURAI.
2. THE INSPECTOR OF POLICE,
MUNNEERPALLAM POLICE STATION,
TIRUNELVELI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.NA.MANIMARAN, Advocate (SR-10335[I] dated 21/09/2022)

ORDER
IN
CRL OP(MD) No.14850 of 2022
Date :21/09/2022

CSM
USK/VR/SAR-III/21.09.2022/4P/6C

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