



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date :23/09/2022

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI
CRL OP(MD). No.14314 of 2022

WEB COPY

Sathish

... Petitioner/Accused No.5

Vs

State Rep.by
The Deputy Superintendent Of Police,
NIB - CID, Madurai District.
Crime No.32/2021.

... Respondent/Complainant

For Petitioner : M/s.RM.Arun Swaminathan, 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. 32 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

2.The petitioner/Accused No.5, who was remanded to judicial custody in Crime No.32 of 2021 on 10.08.2021 for the offences punishable under Sections 8(c) r/w 20(b), (ii) (C), 25 & 29 (1) of NDPS Act and Section 25(1A) of Arms Act, seeks bail. Initially, the case was registered by Avaniapuram Police in Crime No.668 of 2021 against the petitioner and 9 others and thereafter, it was transferred to NIB CID, Madurai.

3.The case of the prosecution is that on 13.06.2021, based on the secret information, the Avaniyapuram police intercepted the Auto Rickshaw bearing Registration No.TN58AA1027 and a two wheeler bearing Registration No.TN37BQ2812 at Avaniyapuram Periyasamy Nagar, CMS Mill Junction and A1 was found in possession of one pistol, two magazines, 5 bullets, cash of Rs.1,00,000/- and two mobile phones and they were seized. Further, on search of the Auto, 60 kgs of ganja was seized and another 130 kgs of ganja was seized from the house of A6.

4.The learned counsel appearing for the petitioner submits that the petitioner was arrayed as fifth accused in the case. He was arrested on 10.08.2021 and he is languishing in jail for the past 340 days. According to the learned counsel for the petitioner, no



contraband has been recovered from the petitioner and as recovered from A1 to A3 & A6 alone. Based on the confession statement of the co-accused, he was implicated as an accused and there is no specific overt act as against this petitioner. Final report has also been filed in this case.

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5.This is the third application filed by the petitioner seeking bail. Earlier applications were dismissed by this Court considering the quantity of ganja involved in this case. The main ground taken by the petitioner's counsel is that the co-accused have been released on bail and the petitioner is languishing in jail from 10.08.2021.

6.The learned Additional Public Prosecutor appearing for the respondent police submits that initially the case was registered by Avaniapuram Police on 13.06.2021 and it was transferred to NIBCID, Madurai, considering the quantity of ganja involved in this case. According to the learned Additional Public Prosecutor, totally there are 11 accused in this case and the petitioner is arrayed as fifth accused. Total quantity of contraband involved in this case is 190 kgs of ganja. Earlier applications filed by the petitioner were dismissed by this Court, considering the nature of offence and the quantity of ganja involved. This is the third application, wherein, the petitioner has taken a specific stand that the main accused have been released on bail by the trial Court. However, there is a presumption clause as per Section 35 and 54 of NDPS Act. He further submits that Section 37 of NDPS Act clearly mandates that while considering the bail application, the following three conditions have to be satisfied.

- i.first condition is that the prosecution must be given an opportunity to oppose the application; and
- ii.the second is, that the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence.
- iii.The concerned Court must satisfy that the accused is not likely commit any offence while on bail.

6.1.The learned Additional Public Prosecutor reiterates that one of the main consideration for granting bail would be Court must satisfy that the person to be released on bail may not commit any offence. The petitioner, who is having five cases in his credit need not be considered for grant of bail on the recovery alone. The Honourable Apex court repeatedly held that offence committed under NDPS Act is heinous one and Courts have to be very cautious in grant of bails.

6.2.The learned Additional Public Prosecutor relied on the following judgments, in order to substantiate his contentions:-

- i. (1999) 9 SCC P.429 in the case of Union of India Vs Ram Samujh and other (1999) .



- ii.(2001) 7 SCC P.673 in the case of State of M.P Vs. Kaj,
- iii.(2009) 2 SCC P 624 in the case of Union of India Vs. Rattan Malik alias Habul

7.This Court considered the rival submissions made and also perused the materials placed on record.

8.Admittedly, the petitioner was arrested on 10.08.2021 in connection with Crime No.32 of 2021 for the offences punishable under Sections 8(c) r/w 20(b), (ii) (C), 25 & 29 (1) of NDPS Act and Section 25(1A) of Arms Act. Subsequently, on the ground of quantity of ganja involved, the case was transferred to NIB CID, Madurai in Crime No.2 of 2022. Totally there are 11 accused in this case and the petitioner is fifth accused. It is seen that earlier applications filed by the petitioner were dismissed considering the quantity involved in this case. Now, the petitioner has come forward with the present application, seeking bail, mainly on the ground that the co-accused A1 to A3 have been released on bail by the trial Court. According to the learned Additional Public Prosecutor, the investigation in this case has been completed and final report was also filed in CC No.304 of 2022. The learned Additional Public Prosecutor has strongly objected for grant of bail to the petitioner citing several judgments of the Hon'ble Apex Court.

9.The Hon'ble Apex Court, in the case of **Union of India Vs Ram Samujh and another** reported in **(1999) 9 SCC P.429**, held that in a murder case, the accused commits murder of one or two persons, whereas, the persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society. This Court is of the view that such kind of offence inflicts immeasurable harm on public health and safety and threatens the peaceful development and smooth functioning of society.

10.In view of the above, this Court is not inclined to entertain this Criminal Original Petition. Accordingly, this Criminal Original Petition is dismissed. However, considering the period of incarceration and the provisions under Section 37 of NDPS Act, the trial Court shall endeavour to conclude the trial as early as possible within a period of six months from the date of receipt of a copy of this order.

sd/-
23/09/2022

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/09/2022

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



TO

1.The Judge,
Principal Special Court for EC & NDPS Act Cases,
Madurai.

2.The Superintendent,
Central Jail,
Madurai.

3.The Deputy Superintendent Of Police,
NIB - CID,
Madurai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

ORDER

IN

CRL OP(MD) No.14314 of 2022

Date :23/09/2022

vrn

RS/SBN/SAR.2 (29.09.2022) 4P-6C