



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 16.09.2022

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . Nos.14648 and 15005 of 2022

Dineshkumar

...Petitioner/Accused No.1
in Crl.OP(MD)No.14648 of 2022

S.Jeyam

...Petitioner/Accused No.2
in Crl.OP(MD)No.15005 of 2022

Vs

The State represented by
The Inspector of Police,
Vikkaramangalam Police Station,
Madurai District.
(Crime No.132 of 2021)

... Respondent/Complainant
in both petitions

For Petitioner : Mr.S.Selvakumar, Advocate.
In both petitions

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

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

COMMON PRAYER :-

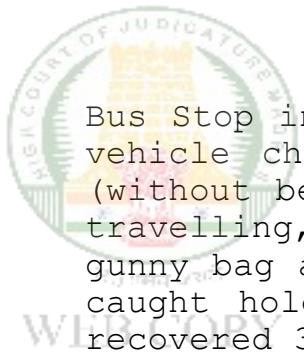
For Bail in Crime No.132 of 2021 on the file of the respondent police.

COMMOM ORDER : The Court made the following order :-

The petitioners/A1 and A2, who were arrested and remanded to judicial custody on 24.10.2021 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act, in Crime No.132 of 2021, on the file of the respondent police, seek bail.

2. The case of the prosecution is that on 24.10.2021, at about 06.00 hours, on receiving secret information about the illegal transporation of Ganja, the respondent police went to Thethupatti

<https://www.mca.gov.in/dis>



Bus Stop in Vikkramangalam to Uthapanayakkanur Road and conducted a vehicle checkup, that they intercepted a Honda Shine two wheeler (without bearing registration number), in which, three persons were travelling, that on seeing the police party, one person dropped his gunny bag and escaped from the place and that the respondent police caught hold the remaining two accused, the petitioners herein and recovered 30 kgs of Ganja.

3. The petitioners' case is that they have not committed any offence as alleged in the First Information Report, that the petitioner Dinesh Kumar is the college going student and the petitioner Jeyam is the daily wager, that both the petitioners were no way connected with each other and it is a purely put up case against them, that they are innocents and that they have been falsely implicated in this case.

4. The learned Additional Public Prosecutor would submit that the bike rider and the two pillion riders were holding a bag each, that one of the pillion rider by name, Manikandan by dropping his bag had escaped from the place of occurrence and that the petitioners were arrested and 30 kgs of Ganja was recovered at the occurrence place.

5. The learned counsel for the petitioners would submit that the respondent police has recovered only 10 kgs of ganja from the petitioners each and therefore question of invoking Section 37 of NDPS Act does not arise at all.

6. As rightly contended by the learned Additional Public Prosecutor, the said plea was raised earlier and this Court by relying on the judgment of the Hon'ble Supreme Court has negatived the said content.

7. As rightly pointed out by the learned counsel for the petitioners, the petitioners are not having any previous cases and hence, this Court can very well say that the petitioners are not likely to commit such an offence, after coming out on bail.

8. Since the recovery was from the petitioners and that the recovery is of commercial quantity of 30 kgs, this Court is of the view that the first condition contemplated under Section 37 of NDPS Act is not satisfied.

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. Considering the above, this Court has no other option but to dismiss the bail pleas of the petitioners. Hence, this Court is not inclined to grant bail to the petitioners. Accordingly, these Criminal Original Petitions are dismissed.

sd/-

16/09/2022

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/09/2022

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



TO

- 1 THE INSPECTOR OF POLICE
VIKKARMANGALAM POLICE STATION,
MADURAI DISTRICT.
- 2 THE SUPERINTENDENT
CENTRAL PRISON,
MADURAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP (MD) . Nos.14648 and
15005 of 2022

Date :16/09/2022

PKP/SVR/SAR-2/21.09.2022/4P/4C