



WEB COPY

CRL OP(MD). Nos.17780 of 2021 and 1251 of 2022

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

RESERVED ON : 17/03/2022

DELIVERED ON : 29/03/2022

PRESENT

The Hon'ble Mr.Justice K.MURALISHANKAR

CRL OP(MD). Nos.17780 of 2021 and 1251 of 2022

Muthupandi ... Petitioner/1st Accused
in Crl.O.P.(MD)No.17780 of 2021

T.Venkatesh ... Petitioner/Accused No.6
in Crl.O.P.(MD)No.1251 of 2022

Vs

The State Rep. By,
The Inspector of Police,
Munneerpallam Police Station,
Tirunelveli District.
Cr.No.526 of 2020.

... Respondent/Complainant
in both petitions

For Petitioner : Mr.M.Jegadeesh Pandian
for Mr.N.Pragalathan
(in Crl.O.P.(MD)No.17780 of 2021)

Mr.M.Jegadeesh Pandian
for Mr.Na.Manimaran
(in Crl.O.P.(MD)No.1251 of 2022)

For Respondent : Mr.E.Antony Sahaya Prabahar,
(in both petitions) Additional Public Prosecutor

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

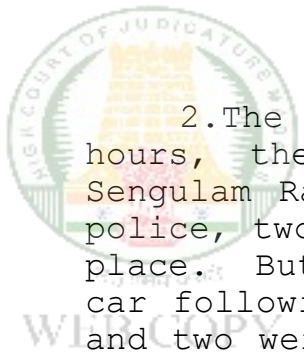
COMMON PRAYER :-

For Bail in Crime No.526 of 2020 on the file of the Respondent police.

COMMON ORDER : The Court made the following order :-

The petitioner/A1, who was voluntarily surrendered before the respondent police on 14.09.2020 and the petitioner/A6, who was arrested and remanded to judicial custody on 09.09.2020 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances Act, on the file of the respondent police, seek bail.

<https://hcservices.ecourts.gov.in/hcservices/>



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 motor cycle tried to escape from the place. But the police nabbed both of them. Five persons came by a car following the motor cycle. 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 2.100 kgs and totally 21kgs contraband were seized from them. Hence, the present case has been registered.

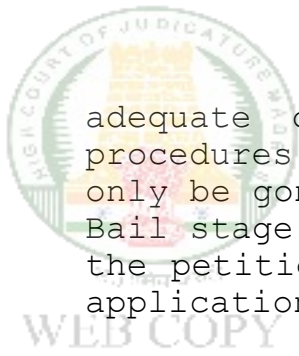
3.The learned counsel for the petitioner/A1 in CrI.O.P.(MD) No.17780 of 2021 would submit that the respondent police had clubbed two separate incidents for the purpose of making commercial quantity, that they have never mentioned any public witnesses at the time of seizing contraband even in a public place and that the petitioner was implicated only on the basis of the confession statement of the co-accused.

4.The learned counsel for the petitioner/A6 in CrI.O.P.(MD) No.1251 of 2022 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.

5.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 A6 along with A7 and that following the two wheeler, a car bearing Registration No.TN-05-AP-7270, which was driven by A1 accompanied by four persons, was also intercepted, that the respondent police arrested A4 to A7 and others had escaped from that place and that they have seized 21kgs of Ganja from two vehicles. He would further submit that the petitioner/A1 was implicated on the basis of the confession taken from A4 and that A1 was very much available at the occurrence place and the petitioner/A1 alone had driven the car. He would further submit that A6, who drove the two wheeler was arrested at the scene of occurrence along with three other accused and contraband of 21kgs was recovered from them.

6.It is not in dispute that the respondent 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.

7.Regarding the non-following of the mandatory procedures
<https://hcservices.go.in/hcservices/> petitioners, 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 petitioners in this regard, cannot be gone into, in the present applications.

8.The learned Additional Public Prosecutor would submit that the petitioners' earlier application was dismissed by this Court vide order dated 30.04.2021 in Crl.O.P.(MD)Nos.172 and 1621 of 2021.

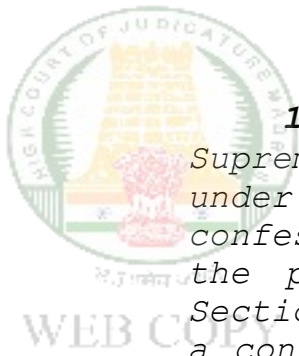
9.At this juncture, it is necessary to refer the decision of this Court in batch of cases in **Crl.O.P.(MD)No.5093 of 2021 etc.**, in **Muruganandham and another vs. the State represented by the Inspector of Police, Authoor Police Station, Thoothukudi District and others**, dated 23.12.2021 and the relevant paragraphs are extracted hereunder:-

"...13.As already pointed out, the main contention of the prosecution is that the confession statement recorded under Section 67 of NDPS Act is admissible in evidence, or not ; is a matter to be gone into and decided at the trial, that since the statement of the co-accused discloses the involvement of the other accused, the confession statement cannot be rejected or discarded while deciding the bail petition and that the case of the prosecution cannot be disbelieved at this point of time.

14.As already pointed out, the Hon'ble Apex Court has specifically held that the Officers, who are invested with powers under Section 53 of NDPS Act are to be considered as Police Officers, as referred in Section 25 of the Indian Evidence Act.

15.Section 25 of the Indian Evidence Act contemplates that no confession made to a Police Officer shall be proved as against a person accused of any offence. The very object of Section 25 is to ensure that the person accused of offence would not be induced by threat, coercion or force to make a confessional statement and the Police Officer is to make every effort to collect or gather the evidence with regard to the commission of offence, but not the confession while the accused is under custody.

16.It is settled law that statements made by an accused before Police Officer, which amount to confessional statement is clearly barred under Section 25 of the Indian Evidence Act and the only exception is under Section 27 of the Indian Evidence Act, which provides that any portion of the information in the confession statement, which leads to discovery of any new fact or thing can be proved.



17. Applying the legal dictum laid down by the Hon'ble Supreme Court in **Tofan Singh's** case any statement recorded under Section 67 of NDPS Act cannot be treated as a confession statement in the trial for the offence under the provisions of NDPS Act. Since the statement under Section 67 of the NDPS Act cannot be treated and relied as a confession statement in the trial itself, then the very question of considering and deciding the validity of the said confession statement at the trial does not arise at all. Moreover, in the absence of any recovery from the accused, now seeking bail, the confession of co-accused implicating the present accused cannot be relied or looked into, so far as the present accused is concerned."

10. Admittedly, the petitioner/A1 was implicated only on the basis of the confession taken from the co-accused and there was absolutely no recovery from him. Regarding the petitioner/A6, as already pointed out, both the vehicles were intercepted and the entire contraband of 21kgs of Ganja, which is of commercial quantity was recovered from both the vehicles.

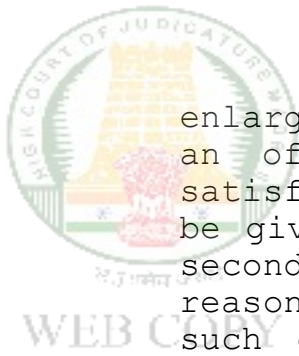
11. The learned Additional Public Prosecutor would fairly submit that both the petitioners are not having any previous case under the NDPS Act.

12. 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."

13.It is settled law that the twin conditions contemplated under Section 37 of the NDPS Act are to be considered as conjunctive and not alternative. Since the petitioner/A6 is not having any previous case under the NDPS Act, this Court can very well record a finding that the petitioner is not likely to commit such an offence, after coming out on bail. But at the same time, since the contraband of commercial quantity was recovered from the petitioner/A6 along with three other accused, this Court cannot record a finding that the petitioner is not guilty of such offence. Since the petitioner/A6 does not satisfy the first condition contemplated under Section 37 of the NDPS Act, this Court has no other option but to dismiss the application. Hence, the petition in Crl.O.P.(MD) No.1251 of 2022 is dismissed.

14.Regarding the petitioner/A1, as already pointed out, except the confession statement of the co-accused, the prosecution has not shown any other material or evidence to link the petitioner/A1 to the crime in question.

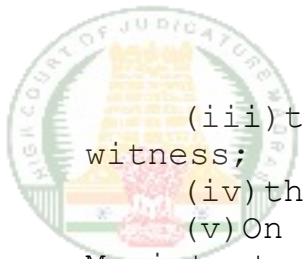
15.Since the petitioner/A1 is also not having any previous case under the NDPS Act, this Court is satisfied that there are reasonable grounds for believing that the petitioner/A1 is not guilty of such offence and that he is not likely to commit any such offence, after coming out on bail, as contemplated under Section 37 of NDPS Act.

16.In view of the above, this Court is inclined to grant bail to the petitioner/A1 subject to the following conditions:

17.Accordingly, the petitioner/A1 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 Special Court for EC and NDPS Act Cases, Madurai.

(i)the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/Special Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

(ii)the petitioner/A1 shall report before the trial Court on <https://hcservices.com/hcservices/> at 10.30 am until further orders;



(iii)the petitioner/A1 shall not tamper with evidence or witness;

(iv)the petitioner/A1 shall not abscond during trial;

(v)On breach of any of the aforesaid conditions, the learned Magistrate/Special Court is entitled to take appropriate action against the petitioner/A1 in accordance with law as if the conditions have been imposed and the petitioner/A1 released on bail by the learned Magistrate/Special 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/A1 thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

29/03/2022

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31/03/2022

Sub-Assistant Registrar (C.S-II)
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 SESSIONS JUDGE,
SPECIAL COURT FOR EC AND NDPS ACT CASES, MADURAI.
2. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
3. THE OFFICER-INCHARGE,
DISTRICT PRISON, DINDIGUL.
4. THE INPSECTOR OF POLICE,
MUNNEERPALLAM POLICE STATION,
TIRUNELVELI DISTRICT.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-2650[I] dated 29/03/2022)

ORDER IN

CRL OP(MD). Nos.17780 of 2021
and 1251 of 2022

Date :29/03/2022

USK/VR/SAR-II/31.03.2022/6P/7C

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