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CRL OP(MD). N



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 13/10/2022

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.16395 of 2022

Prabakaran @ China Prabhakaran

... Petitioner/Accused No.8

Vs

The State rep.by,
The Inspector of Police,
Subramaniyapuram Police Station,
Madurai City.
(Crime No.1453 of 2020).

... Respondent/Complainant

For Petitioner : M/s.Vijayaraja J,
Advocate.

For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor

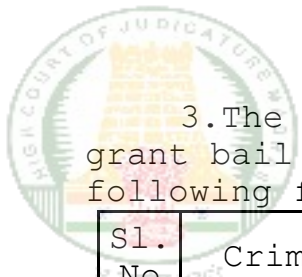
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-For Bail in Crime No.1453 of 2020 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner, who was remanded to judicial custody on 09.02.2021, for the offences punishable under Sections 8(c), 20(b) (ii) (c), 25, 29(1) of NDPS Act in Crime No.1453 of 2020, dated 10.11.2020, on the file of the respondent police, seeks bail.

2.The learned counsel appearing for the petitioner submits that the petitioner is in jail from 09.02.2021 and the other accused, who are similarly placed have been enlarged on bail by this Court. The learned counsel further submits that this Court has to comply with the principle of parity to do justice to the petitioner and denial of grant of bail to the petitioner amounts to injustice to him. The learned counsel further submits that inspite of the order passed by this Court for early disposal of the case in CC No.244 of 2021, the trial Court has not proceeded with the trial and witnesses are yet to be examined.



3.The learned Additional Public Prosecutor strongly opposed to grant bail to the petitioner that the petitioner is involving in the following five cases:-

Sl. No	Crime Numbers	Offences	Name of the police station
1.	767 of 2020	392 r/w 397, 506(ii) IPC	B4 Keeraithurai
2.	549 of 2018	147,148,294(b), 341,353,506(ii) IPC	B4 Keeraithurai
3.	165 of 2019	302,341,506(ii) IPC @ 109, 114, 120(B), 147, 148, 149, 201, 302, 506(ii) IPC	B5 Southgate
4.	757 of 2017	147,148,307,326,341 IPC @ 109,147,148,149,307,324,326,341 IPC	C2 Subramaniapuram
5.	667 of 2018	147,148,294(b), 307,324,506(ii) IPC	B3 Thepakulam

The learned Additional Public Prosecutor has also relied upon the judgment of the Honourable Supreme Court in Criminal Appeal No.2587 of 2014 arising out of S.L.P Crl No.8469 of 2014, Neeru Yadav Vs. State of UP and another, wherein, it was held that the principle of parity cannot be applied for the gangsters. He further submits that Section 37 of NDPS Act has also stipulated the condition that the Court has to satisfy that if the accused is released on bail, he will not indulge in any further offence. Hence, this application is liable to be dismissed.

4.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials placed on record.

5.The petitioner/Accused No.8, who is languishing in jail from 09.02.2021 filed this Criminal Original Petition seeking bail on the ground that the co-accused have been enlarged on bail by this Court and hence principle of parity has to be applied to the petitioner. The grievance of the petitioner is that despite the order of this Court, the trial Court has not proceeded with the trial in CC No.244 of 2021. The learned Additional Public Prosecutor has strongly opposed to grant bail to the petitioner on the ground of parity as the petitioner is having bad antecedents. The Honourable Supreme Court has also held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. In the present case on hand, the petitioner is having five previous convictions against him and also the contraband involved in this case



is 332 kgs of ganja, which is a commercial quantity. This is also not having satisfaction that if this petitioner is coming out on bail, he will not indulge in any offence in future and therefore, this Court is not inclined to grant bail to the petitioner. It appears that this Court directed the trial Court to conclude the trial in CC No.244 of 2021 as expeditiously as possible. Now it is reported that the trial could not be commenced due to non-production of witnesses.

6.The learned Additional Public Prosecutor is directed to instruct the police to produce the witnesses in the next date of hearing and if any accused are absent, the trial Court shall split up the case suitably and shall proceed with the trial and conclude it as expeditiously as possible, within a period of six months from the date of receipt of a copy of this order.

7.With the above direction, this Criminal Original Petition is dismissed.

sd/-

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/10/2022

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

TO

1 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SPECIAL COURT FOR EC AND NDPS ACT CASES, MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
SUBRAMANIPURAM POLICE STATION,
MADURAI CITY.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.VIJAYARAJA J Advocate SR.No.11422

ORDER

IN

CRL OP(MD) No.16395 of 2022

Date :13/10/2022

VRN

MK/SSS/SAR.II/20.10.2022/3P/6C