



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 25.11.2022

Delivered on : 01.12.2022



PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.19501 of 2022

D.Thendralarsu

... Petitioner/ Accused No.9

Vs

State represented by
The Inspector of Police,
NIB-CID,
Nagapattinam,
Nagapattinam District.
(Crime No.21 of 2021)

... 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.

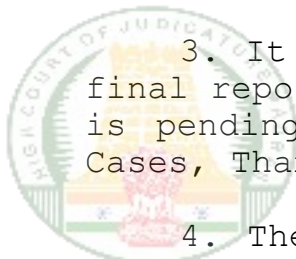
PRAYER :-

For Bail in Crime No.21 of 2021 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/A.9, who was arrested and remanded to judicial custody on 03.10.2021 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act in Crime No.21 of 2021, on the file of the respondent police, seeks bail.

2. Admittedly, originally FIR came to be registered in Crime No.623 of 2021 on the file of the Nagapattinam Town Police Station and that thereafter, the case was transferred to NIB-CID Nagapattinam and FIR came to be registered in Crime No.21 of 2021 on the file of the NIB-CID Nagapattinam.



3. It is not in dispute that the respondent has already submitted a final report and the case was taken on file in C.C.No.16 of 2021 and is pending on the file of the Special Court for EC and NC Cases, Thanjavur.

4. The case of the prosecution is that on 31.07.2021 at about 03.00 hours, on receipt of secret information, the respondent police went to Oosi Matha Temple located at Nagapattinam Beach Road and at 17.00 hours, the respondent police team had intercepted one Innova car bearing Registration No.PY-01-CF-2777 and eight persons were in that car and that after following the mandatory procedures, the respondent police team conducted a search in the said car and found that the accused persons were found in illegal possession of 2 gunny bags of Ganja (each contain 45 kg of Ganja) and they have arrested the accused persons.

5. It is further case of the prosecution that on the basis of the confession statement given by the accused Mukesh, other accused were added and that thereafter on the basis of the confession statement of the accused Maran, Arul Kumar was added as 15th accused.

6. The case of the petitioner is that he is innocent and he has not committed any offence as alleged by the prosecution and that the respondent police have foisted the false case as against the petitioner.

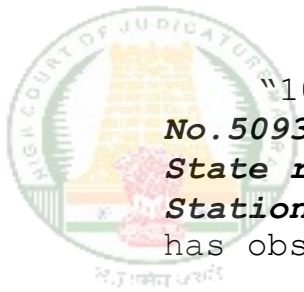
7. The learned counsel appearing for the petitioner would submit that no contraband was recovered from the petitioner and he was implicated only on the basis of the confession statement taken from the co-accused and that the petitioner is not having any previous cases under NDPS Act.

8. The learned Additional Public Prosecutor appearing for the respondent would submit that 8 persons were arrested at the occurrence place, that the contraband of 90 kgs of Ganja was recovered from the car, in which, 8 accused were travelling, that the present petitioner was added on the basis of the confession of the co-accused and that he was actively involved in the transportation and selling of Ganja.

9. It is not in dispute that the trial has already been commenced and is in progress.

10. No doubt, the petitioner's earlier application in CrI.O.P. (MD)No.5311 of 2022 seeking bail was ordered to be dismissed by this Court vide order dated 22.04.2022.

11. As rightly contended by the learned Additional Public Prosecutor, the pleas and the points now raised by the petitioner have already been dealt with and considered by this Court, while dismissing the earlier application and the relevant paras of the earlier order are extracted hereunder,



"10. This Court, in batch of cases in **Crl.O.P. 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:-

WEB COPY

"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;

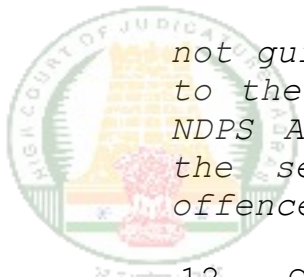
"20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with nonobstante clause.

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."

11. It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative.

....

14. Regarding the second accused, as already pointed out, except the confession statement of the co-accused, the prosecution has not produced any materials or evidences to link the said accused with the crime in question. Hence, this Court can very well observe that the second accused is



not guilty of such offence, but at the same time, according to the prosecution, he is having two previous cases under NDPS Act. Hence, this Court cannot record a finding that the second accused is not likely to commit any such offence, after coming out on bail."

12. Considering the above and also the facts that the petitioner has failed to satisfy the twin conditions contemplated under Section 37 of NDPS Act conjunctively and that there is no change in circumstances, since the dismissal of the earlier petition, this Court is not inclined to grant bail to the petitioner.

13. In the result, this Criminal Original Petition is dismissed.

sd/-
01/12/2022

/ TRUE COPY /

/12/2022
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 concerned.

TO

- 1 THE INSPECTOR OF POLICE
NIB-CID, NAGAPATTINAM, NAGAPATTINAM DISTRICT
- 2 THE OFFICER INCHARGE,
DISTRICT PRISON, NAGAPATTINAM.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.19501 of 2022
Date :01/12/2022

MK/VR/SAR I/07.12.2022/4P/4C