



WEB COPY

Crl.OP(MD)N



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 19/10/2022

PRESENT

The Hon'ble Mr.Justice **G.ILANGO VAN**

Crl.OP(MD)No.17243 of 2022

Mohamed Javid Rahman

... Petitioner/Accused No.1

Vs.

State represented by
The Inspector of Police,
Ramanathapuram Town Police Station,
Ramanathapuram.
(Crime No.72 of 2022)

... Respondent/Complainant

For Petitioner : Mr.V.Kathirvel, Senior counsel

for Mr.V.M.Jegadeeshapandian, Advocate

For Respondent : Mr.T.SENTHIL KUMAR,

Additional Public Prosecutor

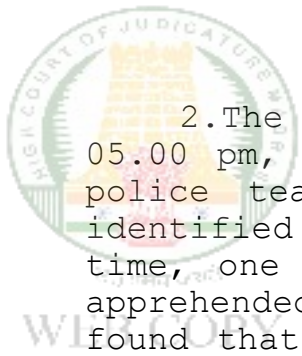
PETITION FOR BAIL under Sec.439 of Cr.P.C

PRAYER :-

For Bail in Crime No.72 of 2022 on the file of the Respondent police.

ORDER : The Court made the following order:-

The petitioner, who is arrayed as A1 was arrested, on 15/05/2022 and remanded to judicial custody for the alleged offences punishable under sections 8(c), 20(b), (ii)(B) of NDPS Act @ 8(c) of NDPS Act, in Crime No.72 of 2022 on the file of the respondent police, seeks bail.



2.The case of the prosecution is that on 02/04/2022 at 05.00 pm, on a secrete information furnished by the informer, the police team went near Pasumpon Railway Gate, two persons were identified by the police informer. They were apprehended. At that time, one person ran away from that place and another person was apprehended. He disclosed that his name is Shebik. On search, it was found that ganja oil that was seized by following the procedures. Based upon the above said occurrence, it was found that oil is 1.36 kilograms, the case was altered to section 8(c) r/w 20(b) (ii) (B) of the Act.

3.Heard both sides.

4.The learned Senior counsel appearing for the petitioner has made the following submissions:-

(i)According to him, recovery has been made only from A2 and on the basis of his confession statement, this petitioner has been implicated; As per the settled position of law, confession of the co-accused in the absence of the any material collected during the course of investigation is not sufficient enough to continue the judicial custody. According to him, this is sufficient enough for discharging the liability under section 37 of the NDPS Act.

5.No doubt that the confession statement of the co-accused alone is not sufficient.

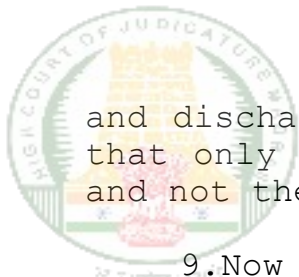
(ii)The next point is that only 10 grams of ganja oil has been taken as sample and that is not sufficient for making the test and that was not properly explained by the prosecution.

(iii)The third contention is that his arrest was made only after the arrest of A2 and he was not aware of the registration of the case against him, he went Dubai and later only, he came to India.

6.The learned Additional Public Prosecutor appearing for the State would submit that absolutely, except the first ground, no other grounds are made in this petition. So according to him, the petitioner must give sufficient opportunity to put forth the above said argument.

7.With regard to the 3rd point, he would submit that the registration of the FIR was known to the petitioner and after filing the anticipatory bail before this court, he went to Dubai and that was dismissed and lookout notice was issued and when he landed in Kerala Airport, he was arrested and remanded to judicial custody.

8.Even though, the learned Senior counsel appearing for the petitioner would submit that the petitioner is a member of Jamath



and discharging his function as such, perusal of the CD file vs that only the father of the petitioner is the member of the Jamath and not the petitioner.

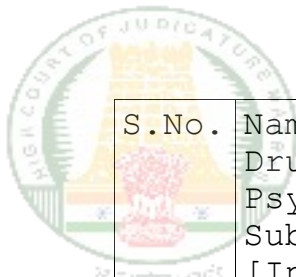
9. Now the case of the prosecution is that only this petitioner is engaged in ganja oil trading and sell the same through A2. It is further submitted by the learned Additional Public Prosecutor that money derived from the above said ganja oil business has been exchanged between the accused persons through Google pay. According to him, materials have been collected and final report has been filed. So the contention that has been raised by the petitioner can be agitation only during the court of the trial.

10. Perusal of the CD file shows that sample was considered to be sufficient enough for testing and the lab report was also available in the CD file. It is also available in the CD file to the effect the profit of the above said ganja trading has been transferred to the account of the accused, as stated by the learned Additional Public Prosecutor. So the contention on the part of the petitioner that except the confession statement of the co-accused, no other material has been collected during the course of investigation is not correct on record.

11. With regard to the lifting of sample, if the petitioner is not satisfied the same, he can agitate the same only during the trial, at the time of examining the expert or the Investigating Officer as the case may be. So the only ground, which got to be answered is whether the ganja oil recovered from A2 will come under the commercial quantity.

12. The answer to this argument can be found in the decision rendered by the Hon'ble Supreme Court in the case of **State through Intelligence Officer, Narcotics Control Bureau Vs. Mushtaq Ahmad Etc. (Criminal Appeal Nos.1294-1295 of 2015, dated 06/10/2015)**, wherein the following observation has been made in para 15:-

"15. It is pertinent to reproduce the relevant extract from the notification dated 19th October, 2001 issued under Clause (viia) and (xxiia) of **Section 2** of the NDPS Act:-



S.No. (1)	Name of Narcotic Drug and Psychotropic Substance [International non-proprietary name [INN]] (2)	Other non-proprietary name (3)	Chemical Name (4)	Small Quantity (in gm.) (5)	Commercial Quantity (in gm/kg.) (6)
23		<u>CHARAS</u> , HASHISH	EXTRACTS AND TINCTURES OF CANNABIS	100	1 kg
150	<u>Cannabis</u> and cannabis resin Tetrahydrocannabinol		The following isomers and their stereochemical variants: - 7,8,9,10-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol (9R, 10aR) - 8,9,10,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol (6aR, 9R, 10aR) - 6a,9,10,10a-tetrahydro-6,6,9-trimethyl	2	50 gm



13. So from the above said, it is seen that CHARAS HASHISH, which has been recovered is of commercial quantity.

14. Considering the gravity of the offence and also considering the fact that final report has been filed before the concerned court, absolutely, I find that the grounds that have been raised by the petitioners are not sufficient enough to dispel the conditions set out in section 37 of the NDPS Act. Considering the offence of this magnitude and the gravity of the above said circumstances, I find no merit in this petition.

15. In the result, these criminal original petition are **dismissed.**

sd/-
19/10/2022

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/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE INSPECTOR OF POLICE
RAMANATHAPURAM TOWN POLICE STATION,
RAMANATHAPURAM.
- 2 THE OFFICER INCHARGE,
DISTRICT JAIL,
PUDHUKOTTAI,
PUDHUKOTTAI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.17243 of 2022
Date :19/10/2022

ER

<https://www.mhcc.madras.gov.in/Case-1/30.11.2022/5P/4C>