



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
RESERVED ON : 29.04.2022
PRONOUNCED ON: 05.05.2022
PRESENT

WEB COPY

The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL OP(MD) . Nos.18698 and 18700 of 2021

Malaisamy ... Petitioner/Accused No.3
in Crl.O.P.(MD)No.18698 of 2021 &
... Petitioner/Accused No.2
in Crl.O.P.(MD)No.18700 of 2021

Vs

The State represented by
The Inspector of Police,
Cumbum North Police Station,
Theni District.
(Crime No.1012 of 2020)

... Respondent/Complainant
in Crl.O.P.(MD)No.18698 of 2021

The State represented by
The Inspector of Police,
NIB CID,
Theni District.
(Crime No.16 of 2021)

... Respondent/Complainant
in Crl.O.P.(MD)No.18700 of 2021

In both petitions:-

For Petitioner : Mr.K.Sivabalan,
Advocate.

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

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

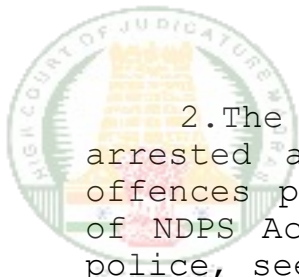
COMMON PRAYER :-

For Bail in Crime No.1012 of 2020 on the file of the respondent Police in Crl.O.P.(MD)No.18698 of 2021 and in Crime No.16 of 2021 on the file of the respondent police in Crl.O.P.(MD)No.18700 of 2021.

COMMON ORDER : The Court made the following order :-

The petitioner/A3 in Crl.O.P.(MD)No.18698 of 2021, who was arrested and remanded to judicial custody on 06.01.2021 for the offences punishable under Sections 8(C), 20(b)(ii)(c), 25 and 29(1) of NDPS Act in Crime No.1012 of 2020, on the file of the respondent police, seeks bail.

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



2.The petitioner/A2 in CrI.O.P.(MD)No.18700 of 2021, who was arrested and remanded to judicial custody on 11.03.2021 for the offences punishable under Sections 8(C) r/w 20(b)(ii)(c) and 29(1) of NDPS Act in Crime No.16 of 2021, on the file of the respondent police, seeks bail.

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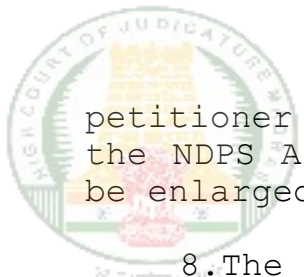
3.The case of the prosecution in CrI.O.P.(MD)No.18698 of 2021, is that on 21.09.2020, at about 21.15 hours, on receiving secret information, the respondent police have conducted raid in the place opposite to TNSTC Depot at Cumbum Main Road near GS Fruit Stall, that on seeing the police party, four persons had escaped from that place and one person, namely, Velmurugan was nabbed along with Mahindra Pickup Vehicle bearing Registration No.TN-60-V-0338 and Hundai i20 vehicle bearing Registration No.TN-59-AS-4659 and Yamaha two wheeler bearing Registration No.TN-60-AU-1424 and that they recovered 176kgs of Ganja from him. It is the further case of the prosecution that on the basis of the confession taken from the said accused, the other accused Gova @ Kubendiran and the petitioner were added as accused.

4.The case of the prosecution in CrI.O.P.(MD)No.18700 of 2021, is that on 23.09.2020 at about 1.45 p.m., on receiving secret information, the respondent police went to one shop, situated nearby the Union Office South Gate, Cumbum Kudalur Main Road, that the said shop was opened in the presence of the owner, Thandeeswari, that they have found 80kgs of Ganja in two gunny bags, that the said Thandeeswari had given the statement that the petitioner and other four accused had taken the shop on rent and that they would kept that Ganja and that on the basis of the statement given by the owner of the building, the present case has been registered.

5.The petitioner's case is that he is innocent and he has not committed any offence as alleged by the prosecution, that there was no recovery from the petitioner, that he was wrongly implicated in the first case only on the basis of the confession of the co-accused, that he was again wrongly implicated in the second case on the basis of the statement alleged to have taken from the building owner, Thandeeswari and that there are no materials to connect the petitioner with the above two cases.

6.The learned counsel for the petitioner would submit that the detention orders were passed against the petitioner on 05.02.2021, that the same were challenged in H.C.P.Nos.381 and 382 of 2021 and that the same were allowed on 19.08.2021.

7.The learned Additional Public Prosecutor would submit that there was no recovery from the petitioner in both the cases, but the vehicle belonging to the petitioner was recovered at the occurrence place along with the contraband, that in the second case, owner of the building, Thandeeswari has given a specific statement that the petitioner and other accused had taken her shop on rent, that the



petitioner is having five previous cases, including two cases under the NDPS Act and that therefore, the petitioner is not entitled to be enlarged on bail.

8. The learned Additional Public Prosecutor would submit that Yamaha Cygnus Ray ZR two wheeler bearing Registration No. TN-60-AU-1424 is owned by the petitioner, that the said vehicle and the petitioner were very much available at the time of raid, that the petitioner after seeing the police party, had escaped with the other accused and that his two wheeler was recovered along with the Pick UP Van and Car and the contraband of 30kgs of Ganja. As rightly contended by the learned Additional Public Prosecutor, the petitioner has not given any reason or explanation as to how his vehicle was available at the occurrence place.

9. Regarding the second case, as rightly contended by the learned counsel for the petitioner, except the alleged statement recorded from the building owner, Thandeeswari, there is no other material to connect the petitioner with the crime in question. But, according to the prosecution, the petitioner is having five previous cases including two cases under the NDPS Act. In the counter affidavit, it has been specifically stated that he is having two previous cases in Crime No. 232 of 2011 of Uthamapalayam Police Station and another case in Crime No. 283 of 2019 on the file of the Cumbum North Police Station. No doubt, the learned counsel for the petitioner would submit that the petitioner was already acquitted in the earlier case.

10. This Court, in batch of cases in **Cr1.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."

11.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. No doubt, as already pointed out, in the second case, except the statement of the building owner, the prosecution has not produced any other material to connect the petitioner with the crime in question. But at the same time, in the first case, the petitioner's two wheeler was very much available and the same was seized along with other vehicles and the contraband of commercial quantity. Moreover, the petitioner is having two other previous cases, in addition to the present two cases. Though the petitioner was acquitted in one case earlier, he is having three previous cases including the present cases. As such, this Court cannot record a finding that the petitioner is not likely to commit such offence, after coming out on bail.

12.Considering the above, this Court has no other option but to hold that the petitioner has miserably failed to satisfy the twin conditions contemplated under Section 37 of the NDPS Act and as such, this Court is not inclined to grant bail to the petitioner.

13.In the result, these Criminal Original Petitions are dismissed.

sd/-
05/05/2022

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

SJI

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
CUMBUM NORTH POLICE STATION, THENI DISTRICT

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
NIB CID, THENI DT

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

+1. CC to M/S. SARAN KUMAR.A. Advocate SR.No.23463(f)

ORDER

IN

CRL OP (MD) Nos.18698

and 18700 of 2021

Date :05/05/2022

SS/PN/SAR:II/10.05.2022 : 5P/6C