



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
RESERVED ON : 23/02/2022
PRONOUNCED ON : 04/03/2022
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.18681 of 2021

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M.Prabhu

... Petitioner/Accused No.5

Vs

Union of India Through
The Intelligence Officer,
Narcotic Control Bureau,
Madurai Sub Zone, Madurai.
(NCB F.No.48/1/03/2020/NCB-MDU).

... Respondent/Complainant

For Petitioner : Mr.G.Karuppasamy Pandian, Advocate
for Mr.Na.Manimaran, Advocate

For Respondent : Mr.C.Arul Vadivel @ Sekar,
Special Public Prosecutor

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

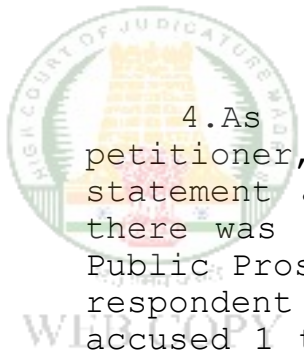
For Anticipatory Bail in Crime No.NCB F.No.48/1/03/2020/NCB-MDU of 2021 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/accused No.5, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 20(b)(ii)(c), 27(A), 28 and 29 of the NDPS Act, in NCB F.No.48/1/03/2020/NCB-MDU, seeks anticipatory bail.

2.The case of the prosecution is that on receiving secret information, the respondent made surveillance on 31.01.2020 at 11.30 hours and at about 15.15hours, a car bearing Registration NO.KH-45-B-5904 was intercepted, that they found 4 persons with possession of 90.300 kg of ganja in 40 parcels and that all the four persons were arrested and the entire contraband was recovered along with the car.

3.The petitioner's case is that there is no incriminating material to link him in the alleged occurrence, that the petitioner was implicated only on the basis of the confession alleged to have taken from the co-accused, that they have seized two mobile phones allegedly used by the petitioner and the above two mobile phones and its numbers are not standing in the name of the petitioner, that the petitioner is not having any previous case for similar offences and that therefore, the petitioner is entitled to be enlarged on anticipatory bail.



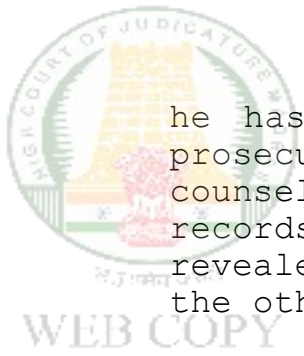
4.As rightly contended by the learned Counsel for the petitioner, the petitioner was added on the basis of the confession statement alleged to have taken from the co-accused and moreover, there was no recovery from the petitioner. But the learned Special Public Prosecutor appearing for the respondent would submit that the respondent had seized two mobile phones from the car, in which the accused 1 to 4 were travelling with the contraband, that request to provide the CAF and CDR was sent to the service providers and received corresponding mobile numbers for SIM No.89918690400398229066-9345860944 and SIM No.899143000840558133637-9626540799 and the same were subscribed in the names of Smt.Petchiammal Mani and the second one in the name of Smt.Vijaya Ayyar and that on verification, they came to know that the petitioner has conspired several times with four accused.

5.The learned Special Public Prosecutor appearing for the respondent would further submit that the respondent has recorded the statement from Petchiammal, wherein she has stated that when she was working as a coolie in the petitioner's land, the petitioner has taken her Aadhar card informing that he will help her to get the Tamil Nadu Government's destitute widow pension and got her left thumb impression also and that she does not have any mobile phone.

6.The learned Special Public Prosecutor would further submit that the summons sent to Smt.Vijaya Ayyar to the address mentioned in the CAF was returned by the postal department, un-served with endorsement "Enquiry made and insufficient address" and that they have been taking steps to trace out the said Vijaya Ayyar. The learned Special Public Prosecutor would further submit that there need not be any physical possession as claimed by the petitioner and the possession can also be a constructive possession having power and control over the property, that though the petitioner was present at the time of seizure, he ran away and that he exercised control over the contraband along with the co-accused.

7. The learned Special Public Prosecutor appearing for the respondent has relied on the judgment of the Hon'ble Supreme Court in ***Ashish Vs State of Maharashtra (Petition for Special Leave to Appeal (Crl)No.526 of 2020, dated 24.08.2021)*** and the relevant passages are extracted hereunder:

"On 18.08.2020, 182 grams and 26 mg of Mephedrone(MD) drug was seized from Vikas @ Sunny, Barkat Ali, Siraj Abdul Sattar Khan and Sk. Akbar Shaukat Ali. Their mobile phones were seized and during the course of investigation, it was found that the petitioner is involved in the offence. The petitioner contended that he is a police informer and had given information to the NDPS Cell about drug peddlers for which he even suffered an assault. The petitioner further contended that he has been falsely implicated and



he has no role to play in the crime. On behalf of the prosecution, it was submitted by Mr. Sachin Patil, learned counsel for the State that a scrutiny of the call detail records of the mobile phone belonging to the petitioner revealed that he was in regular contact with Heena Shah and the other co-accused."

8.The learned Special Public Prosecutor appearing for the respondent has also relied on the judgment of this Court passed in **Crl.O.P.(MD)No.14751 of 2021, dated 01.1.2021 in S.Ramadhas @ Karuthapandi Vs. the State represented by the Superintendent of Police, Narcotic Control Bureau, Madurai Sub Zone**, wherein this Court while dismissing the petition for anticipatory bail has held that the Investigating Agency has collected all call details and other materials to substantiate the case as against the petitioner and that can be decided only during the trial.

9.Admittedly, the petitioner is not having any previous case under the NDPS Act. The respondent has produced call record details to show that the petitioner had contacted the other accused several times and that they were in regular contact.

10.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 held 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."

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11. Since the respondent has produced the call details *prima facie* evidencing that the petitioner had contacted the other accused regularly and also considering the contention of the prosecution that the petitioner was very much available in the occurrence place and after seeing the respondent officials, he ran away from the spot leaving the two mobile phones and also the quantum of contraband seized, this Court cannot record a finding that the petitioner is not guilty of such offence. No doubt, since the petitioner is not having any previous case, this Court can very well observe that the petitioner is not likely to commit any such offence while on bail. But as already pointed out, the twin conditions contemplated in Section 37 of the NDPS Act are not to be taken as alternative, but conjunctive. Hence, this Court has no other option, but to say that the petitioner is not entitled to get anticipatory bail.

12. In the result, the Criminal Original Petition is dismissed.
sd/-

04/03/2022

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Sub-Assistant Registrar (C.S.)
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 Intelligence Officer,
Narcotic Control Bureau,
Madurai Sub Zone, Madurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER IN
CRL OP(MD) No.18681 of 2021
Date : 04/03/2022

RS/VR/SAR.2(09.03.2022) 4P-3C

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