



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 25/11/2022

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.18039 of 2022

1. Sasikumar,

2. Jesuraja, ... Petitioners/Accused 1 & 4

Vs

1. The Deputy Superintendent Of Police,
NIB-CID, Dindigul,
Dindigul District. ...Respondent/Investigation Officer

2.State Rep.by
The Inspector of Police,
Chatrapatti Police Station,
Dindigul District. ... 2nd Respondent/Complainant

For Petitioner : M/s.Paul Kanagaraj R.C., Advocate.

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

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

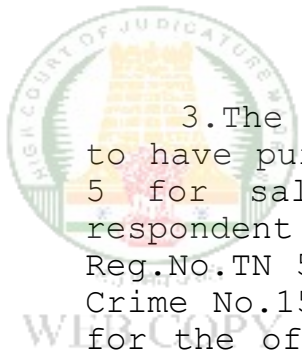
PRAYER :-

For Anticipatory Bail in Crime No. 36 of 2021 on the file of the respondent Police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondents.

2.The petitioners are the accused Nos.1 & 4 in Crime No.36 of 2021. The respondent police registered the above case by arresting the accused Nos. 2 & 5 from the place of occurrence along with 50 kgs of ganja and also fixed these petitioners as accused Nos.1 & 4 that they were also present along with the other accused in the place of occurrence and on seeing police party, they ran away from



3. The case of the prosecution is that the first petitioner had to have purchased ganja and distributed the same to the accused 2 & 5 for sale and the fourth accused is escorted his car. The respondent police have also recovered a motor cycle bearing Reg.No.TN 57 U 4974 from the place of occurrence. Hence, a case in Crime No.157 of 2021 was registered as against the accused persons, for the offences punishable under Sections 8(c) r/w 20(b) (ii) (c) of NDPS Act and subsequently, it was transferred to NIB CID and registered the First Information Report in Crime No.36 of 2021.

4. Earlier applications filed by these petitioners were dismissed, considering the provisions under Sections 35 & 37 of NDPS Act. The present fifth application is filed by the petitioners on the following change of circumstances.

- That the respondent police has taken a stand that these petitioners were present at the place of occurrence on 10.05.2021. However, the respondent police could not produce any materials to substantiate the same. However, they claim the presence of the petitioners in the place of occurrence on 09.05.2021 on the prior date of occurrence. The petitioners are the residents of Ottanchatram and the place of occurrence is nearby Ottanchatram Main Road. Therefore, by referring the call details of the petitioners on 09.05.2021 near the place of occurrence can not be a ground to reject the application.
- This Court has dismissed the earlier applications on the submissions of the learned Additional Public Prosecutor that there was a money transaction between the first petitioner/first accused and the second accused. According to the petitioners' counsel, A2 is an agent, who is looking after the lorry business and therefore, the first petitioner used to pay freight charges to the petitioner. Therefore, money transaction between the first petitioner and the second accused cannot be treated as a transaction connecting the first petitioner with the crime.
- Insofar as the second petitioner is concerned, the learned counsel appearing for the petitioner submits that the second petitioner is working with the first petitioner for more than 10 years and therefore he is implicated as an accused in this case.
- Yet another ground taken by the learned counsel for the petitioners is that in earlier, a complaint for theft of a lorry has been registered in Crime No.2103 of 2020, on the file of the Chatrapathi Police Station and for inaction on the part of the police, the first petitioner has lodged a complaint as against the police and also filed a writ petition before this Court and therefore, the Chatrapatti Police are instrumental for implicating this petitioner in the present crime. According to the petitioners' counsel, the Deputy Superintendent of police is one and the same for Chatrapatti Police Station and Ottanchatram Police Station.



- He further pointed out that in his complaint in Crime No.2103 of 2020, he has specifically made allegations as against one Nagaraj as a suspicious accused and this Nagaraj is shown as witness in the present Final Report filed in Crime No.157 of 2021. Therefore, according to the learned counsel for the petitioner, this case is foisted one in order to wreck vengeance for having registered complaint as against the police.

5.The learned Additional Public Prosecutor appearing for the respondent submits that this is the fifth application filed by these petitioners for anticipatory bail and there is no change in circumstances after dismissal of the previous applications to entertain this Criminal Original Petition. He further submits that these petitioners are the main accused and they were also present in the place of occurrence along with the other accused. The petitioner took 50 kgs of ganja in his car and the same was distributed to A1 and A2 on the date and place of occurrence, from where, the contraband was distributed to the other accused. At that time, on seeing the police party, the petitioners/accused 1 & 4 have managed to escape from the place of occurrence. He also submits that there are call details between A1 and A2 on the previous date of occurrence and tower location also fixed as to the availability of these petitioners near the place of occurrence on the previous date of occurrence. Apart from that, a sum of Rs.1,00,000/- has been transferred by the second accused to the account of the first petitioner. The learned Additional Public Prosecutor also referred that the first petitioner involved in several other criminal cases and he was also convicted in a criminal case for the offence under Section 307 IPC and sentenced to undergo five years rigorous imprisonment.

6.He further submits that insofar as the second petitioner is concerned, the respondent police has recovered a Hero Honda Motorcycle bearing Reg.No.TN 57 U 4974 from the place of occurrence, which stands in the name of one Mohan. On examination of the said Mohan, he gave a statement under Section 164 of Cr.P.C., that he already sold the motorcycle to the second petitioner/ A4. Both Mohan and the fourth accused are residing in the same locality and therefore, there are several materials as against these petitioners to connect them in Crime.

7.The learned Additional Public Prosecutor further submits that the investigation agency has filed an application for further investigation, under Section 173(8) of Cr.P.C before the trial Court in Crime No.1319 of 2022, on 10.09.2022 and the same is posted for hearing on 01.12.2022.

8.This Court considered the rival submissions made and also
<https://www.mca211.co.in/judis> materials placed on record.



9. On perusal of the record shows that though no recovery has been made from these petitioners, they were present in the place of occurrence along with other accused and they managed to escape, on seeing the police party. Also, there is no change in circumstances after dismissal of the earlier application.

10. In view of the above, this Court is not inclined to grant anticipatory bail to the petitioners. Accordingly, this Criminal Original Petition is dismissed.

sd/-
25/11/2022

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/12/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE DEPUTY SUPERINTENDENT OF POLICE,
NIB-CID, DINDIGUL, DINDIGUL DISTRICT.
- 2 THE INSPECTOR OF POLICE
CHATRAPATTI POLICE STATION,
DINDIGUL DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.R.C.PAUL KANAGARAJ, Advocate (SR-13914[I] dated 29/11/2022)

ORDER
IN
CRL OP(MD) No.18039 of 2022
Date :25/11/2022

vrn
PKP/SSS/SAR-4/15.12.2022/4P/5C