



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 15.03.2022
PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) No.20770 of 2021

GANESAN ... PETITIONER / PETITIONER / PETITIONER /
PETITIONER / ACCUSED No.7

Vs

1 THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
SINTHUPATTI POLICE STATION,
MADURAI DISTRICT.
CRIME NO.38/2020

2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE (CRIME),
CHENNAI. ... RESPONDENTS / RESPONDENTS / RESPONDENTS /
RESPONDENTS / COMPLAINANTS

R2 is SUO MOTU impleaded as per
order dated 04.01.2022 in CRL OP(MD)
No.20770 of 2021.

For Petitioner : M/S.K.K.RAMAKRISHNAN, Advocate for
M/S.PITCHAI MUTHU.M, Advocate
For Respondents : Mr.T.SENTHIL KUMAR,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

PRAYER:

FOR BAIL IN CRIME NO. 38 OF 2020 ON THE FILE OF THE RESPONDENT
POLICE

ORDER : The Court Made the following order :-

The petitioner, who was arrested by the respondent police on
18.09.2020, for the offence punishable under Sections 8(c) r/w
Sections 20(b)(ii)(C), 25 and 29(1) of the Narcotic and Drugs and
Psychotropic Substances Act, moved this fifth bail application.

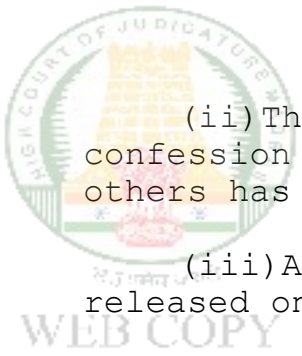
2.The earlier bail applications of the petitioner were
dismissed by this Court considering the quantity of the contraband
involved, i.e., 120 Kgs of ganja, which is commercial quantity.

3.This fifth bail application has been filed on the following
change of circumstance.

(i) The investigation in this case has been completed and final
report is filed, which was also taken on file in C.C.No.29 of 2021

by the trial court.

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



(ii) The petitioner was arrayed as accused No.7 on the confession statement of accused No.1 that accused No.1 along with others has procured ganja for selling in small packets.

(iii) Accused Nos.1, 2, 3, 5 and 6 were arrested and already released on bail by this Court.

(iv) Except the confession statement of accused No.1, there is no other material available as against the petitioner.

(v) The respondent Police projected as if the petitioner has involved in five other cases. But, the case in Crime Nos.27 of 2014, 53 of 2014 and 204 of 2014 on the file of the Sindhupatti Police Station, were registered under Section 109 CrPC and the same were already closed. The cases in Crime No.930 of 2020 were registered for the offence under Section 8(c) r/w 20(b)(ii)(B), 29(1) of NDPS Act and crime No.301 of 2019 was registered for the offence under Sections 420 and 109 IPC on the file of the Sindhupatti Police Station, but in none of the cases, the petitioner was found guilty by the Court.

4. The learned Counsel for the petitioner submits that though the petitioner is involved in two other cases, the Hon'ble Supreme Court in **State by (NCB) Bengaluru Vs Pallulabid Ahmad Arimutta and Another**, reported in **2022 LiveLaw(SC) 63** on similar circumstances, has considered the grant of bail for an accused under the NDPS Act though the said accused has involved in two other cases and the relevant portion of the judgment is extracted hereunder:

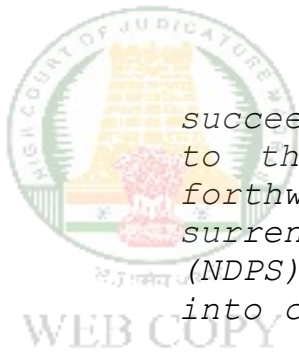
"9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Cr1.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

10. It has been held in clear terms in **Tofan Singh Vs. State of Tamil Nadu 6**, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence



under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused Petition for Special Leave to Appeal (Criminal) No. 1569 OF 2021 under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.

11. However, the evidence brought before us against Mohammed Afzal [A-2], respondent in SLP (Crl.) No. 1569/2021, subject matter of the second case i.e., NCB Case FN No. 48/01/07/2019/BZU, who was granted bail vide order dated 08th January, 2020, will have to be treated on an entirely different footing. There are specific allegations levelled against the said respondent regarding recovery of substantial commercial quantities of drugs from a rented accommodation Petition for Special Leave to Appeal (Criminal) No. 1569 OF 2021 occupied by him pursuant to which he was arrested on 16th June, 2019. This aspect has been completely overlooked while passing the order dated 08th January, 2020 wherein, the only reason that appears to have weighed with the High Court for releasing him on bail is that his case stands on the same footing as A-1, A-3 and A-4 who had been enlarged on bail vide orders dated 11th October, 2019, 16th September, 2019 and 09th September, 2019, in connection with the second case registered by the Department. We are of the firm view that A-2 cannot seek parity with the aforesaid co-accused and no such benefit could have been extended to him in view of Section 37 of the Act when he was found to be in conscious possession of commercial quantity of psychotropic substances, as contemplated under the NDPS Act. That being the position, the petitioner-NCB



succeeds in SLP (Cr1.) No. 1569/2021. The bail granted to the respondent-Mohammed Afzal [A-2] is cancelled forthwith at this stage and he is directed to surrender before the Sessions Court/Special Judge (NDPS) within a period of two weeks, for being taken into custody."

5.Per contra the learned Additional Public Prosecutor for the State submits that there is no change in circumstances. The petitioner has involved in similar offence in Crime No.930 of 2020 on the file of the Sindhupatti Police Station. The contraband involved in this case is 120 Kgs of ganja. As per Section 37 of NDPS Act, the petitioner has to satisfy that he will not indulge in any further offence after coming out on bail. Since the petitioner has already involved in five cases, there is every possibility of the petitioner involving in further offence after coming out on bail. Therefore, the learned Additional Public Prosecutor opposes this bail application.

6.Heard the learned Counsel on either side and perused the materials placed on record.

7.The petitioner is arrayed as accused No.7. The petitioner was implicated as accused in this case through the confession statement of A1. Except this petitioner, all other accused in this case were arrested and released on bail. The investigation agency in this case has also filed a final report in C.C.No.29 of 2021. Even in the final report, except the confession statement of accused No.1, no other material is available as against the petitioner.

8.Though the investigation agency has projected that the petitioner has involved in five other cases, among them, three cases are registered under Section 109 CrPC and they were also closed. The petitioner was arrested on 18.09.2020 and he is in prison for nearly eighteen months. The occurrence had taken place on 17.02.2020, but the petitioner was arrested only after seven months based on the confession statement of accused No.1. Since the investigation has not collected any other material, apart from the confession statement of accused No.1 and also in view of the above decision of the Hon'ble Supreme Court, this Court is inclined to grant bail to the petitioner.

9.In the light of the above discussion, this Court is inclined to grant bail to the petitioner. Accordingly, this petition is allowed. ***The petitioner is directed to be released on bail on his executing a bond for a sum of Rs.2,00,000/- (Rupees Two Lakh only) with two sureties, each for a like sum to the satisfaction of the learned Judge, Principal Special Court for EC and NDPS Act Cases, Madurai*** and on further conditions that:



[a]the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Judge may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b]the petitioner shall report before the respondent Police as and when required.

[c]the petitioner shall not abscond either during investigation or trial.

[d]the petitioner shall not tamper with the evidence or witness either during investigation or trial.

[e]On breach of any of the aforesaid conditions, the learned Judge/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner is released on bail by the learned Judge / Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

It is always open to the investigation agency, to move cancellation of bail application, if they collect any other materials against the petitioner.

sd/-

15/03/2022

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16/03/2022

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

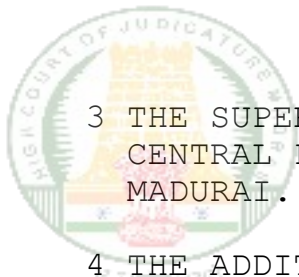
Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1 THE JUDGE,
PRINCIPAL SPECIAL COURT FOR EC AND NDPS ACT CASES, MADURAI.

2 THE INSPECTOR OF POLICE
SINTHUPATTI POLICE STATION, MADURAI DISTRICT.

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



3 THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.

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

COPY TO:

THE ADDITIONAL DIRECTOR
GENERAL OF POLICE (CRIME), CHENNAI.

+1 CC to MR.M.PICHAIMUTHU, Advocate (SR-2056[I] dated 15/03/2022)

ORDER IN
CRL OP(MD) No.20770 of 2021
Date :15/03/2022

dsk

MK/PN/SAR.III/16.03.2022/5P/7C