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CRL OP(MD). N



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

DATE :29.11.2022

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL OP(MD) . No.20995 of 2022

Anilkumar

... Petitioner/A-7

Vs

The State rep., by
The Sub-Inspector of Police,
NIB-CID, Nagapattinam.
(In Crime No.06/2022)
(Velapalayam P.S.Cr.No.33 of 2022)

... Respondent/Complainant

For Petitioner : Mr.A.Senthilkumar

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

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

PRAYER :-

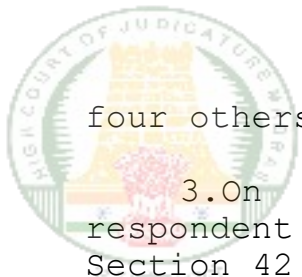
For Bail in Crime No. 06/2022 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/Accused herein, who was arrested on 18.01.2022 for the alleged offence under Section 8(c) r/w Sections 20(b)(ii)(C) and 25 of NDPS Act, in Crime No.06 of 2022, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on secret information, on 18.01.2022, the respondent Police conducted vehicle check-up and seized two vehicles viz., one from Andra Pradesh, bearing registration No. AP-31-BY-1287, another one from Kerala, bearing registration No. KL-01-BW-1431 and found each 20 kgs of ganja in 8 gunny bags (160 Kgs) and 7 kgs from one gunny bag, ie., totally 167 kgs of contraband. Based on the confession, the respondent police registered a case in Crime No.33 of 2022 against this petitioner and

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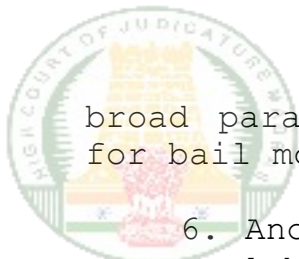
four others. The petitioner is arrayed as A7 in this case.

3. On the side of the petitioner, it is stated that the respondent failed to follow the procedures contemplated under Section 42 of NDPS Act. Copy of the secret information was not sent to the higher officials. The petitioner was not produced before the Gazette Officer or the Judicial Magistrate as per Section 50 of NDPS Act and mandatory provision under Sections 50(6), 50(5) of NDPS Act were not followed. Sample was not taken in the presence of Judicial Magistrate as per Section 52(A) of NDPS Act. The petitioner has already filed an application before the Special Court of EC and NDPS Act Cases, Thanjavur and the same was dismissed on 21.03.2022. There was no recovery from this petitioner. Co-accused viz., A3, A5 were already released on bail. No previous case is pending against this petitioner and the seized vehicle is not in the name of the petitioner. The petitioner is only summoned in the case. Contraband was not recovered from the car, in which, the petitioner was traveling. The only offence alleged against the petitioner is that he traveled along with A3 and A5, who were already released on bail. There was no necessity for the car to follow the car, in which, contraband was seized. There is no necessity for a buyer to follow the car of the seller and the allegation of the prosecution is unbelievable. The prosecution has not stated anything as to the quantity proposed to be purchased, the rate fixed etc., Even after a lapse of twelve months, there was no materials to show the offer price or the quantity to be purchased. There is no warrant under Section 37 against the petitioner. Both the cars are recovered only from A1. Both the cars and the contraband were not recovered from the petitioner. The petitioner is ready to give local address and to produce local sureties. Hence, prayed to release the petitioner on anticipatory bail.

4. On the side of prosecution, it is stated that two vehicles involved in the offence, one vehicle registered in Andra Pradesh and another one registered in Kerala. The petitioner is a resident of Andra Pradesh. The vehicles were intercepted at Madurai and totally 167 kgs of contraband were seized. The petitioner has not stated any reason for his visit to Madurai. Totally 9 persons involved in the offence, in which, three persons from Andra Pradesh and two persons from Kerala. They are transporting drugs from Andhra Pradesh to Kerala, through Madurai and Theni. In NDPS Act cases, bail is the rule, jail is the exception. In the past one month, 2,000 kgs of contraband were seized by the respondent Police and already 650 cases were pending for execution of NBW. If released on bail, there is a chance for the petitioner to abscond and escape from the clutches of law and hence, prayed to dismiss the petition.

5. On the side of prosecution, a judgment of the Hon'ble Supreme Court reported in **2020-SAR-(Cri)-326 (State of Kerala V. Rajesh)** is cited, wherein, has held that this Court has laid down

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broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act.

6. Another judgment in **Union Of India V. Ram Samujh and others reported in 1999-9-SCC-129**, is cited, wherein, it is stated that "It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons, who are dealing in narcotic drugs are instrumental in causing death or in inflicting deathblow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and / or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved."

7. On the side of prosecution, another judgment of the Hon'ble Supreme Court reported in **1990-1-SCC-95 (Durand Didier V. Chief Secretary, Union Territory of Goa)** is cited, wherein, it is stated as follows:-

"With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addicting among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, parliament in its wisdom, has made effective provisions by introducing this Act, 91 of 1985, specifying mandatory minimum imprisonment and fine. "

8. On the side of prosecution, another judgment of the Hon'ble Supreme Court reported in **2011-SAR(Cri)-34 (Prasanta Kumar Sarkar V. Ashis Chatterjee and another)** is cited, wherein, it was held that it was equally imperative for the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the ratio set by catena of decisions of this Court.

9. On the side of prosecution, a judgment of the Hon'ble Supreme Court reported in **2011-1-SCC-609 (Vijaysingh Chandubha Jadeja V. State of Gujarat)**, is cited, wherein, the Hon'ble Supreme Court has held that needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 has been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that



10. It is seen that earlier petition filed by the petitioner was dismissed by this Court in Crl.O.P(MD).No.10296 of 2022 dated 08.09.2022 and there is no change of circumstances. Accordingly, this Court is not inclined to release the petitioner on bail.

11. Hence, this Criminal Original Petition is dismissed.

sd/-
29/11/2022

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/12/2022

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

Rmk

To

1. The Sub-Inspector of Police,
NIB-CID, Nagapattinam.
2. The Officer Incharge, District Prison, Nagapattinam.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER
IN
CRL OP(MD) . No.20995 of 2022
Date : 29.11.2022

TR/VR/SAR-II(07.12.2022) 4P 4C