



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

DATE : 29.11.2022

PRESENT

THE HONOURABLE MRS.JUSTICE R.THARANI

Crl.O.P.(MD)No.20968 of 2022

Mahesh Shanmugam @ Mahesh @ Kalvai Mahesh

... Petitioner/Accused No.2

Vs.

The State Rep.by
The Inspector of Police,
Muneerpallam Police Station,
Tirunelveli District.
Crime.No.526 of 2020.

... Respondent/Complainant

For Petitioner : M/s. Jegadeesha Pandian V M,
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

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

PRAYER :-For Bail in CC.No.147 of 2021 on the file of the District and Sessions Court for NDPS Act cases, Madurai.

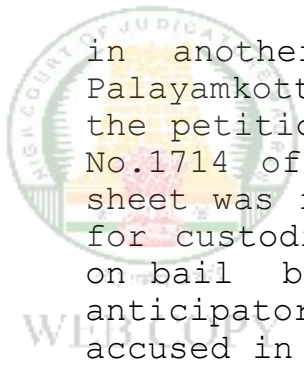
ORDER : The Court made the following order :-

The petitioner/Accused, who was arrested on 29.11.2021 for the alleged offence under Sections 8(c) r/w 20(b)(ii)(C), 29(1) and 25 of NDPS Act, in CC.No.147 of 2021 in Crime No.526 of 2020, on the file of the learned District and Sessions Judge, NDPS Act Cases, Madurai, seeks bail.

2.The case of the prosecution is that on secret information, on 09.09.2020 the respondent Police conducted vehicle check-up and seized two wheeler bearing registration No. TN 72 BF 2363 and found 21 kgs of contraband. Based on the confession, the respondent Police has registered a case in Crime No.526 of 2020, against four accused persons. The petitioner is arrayed as A2 in this case.

3.On the side of the petitioner, it is stated that the petitioner is noway connected with the case. The entire contraband was seized from the other accused persons. The petitioner was arrested on 29.11.2021 and he is in custody for the past 1 year. The petitioner also filed first bail petition before the Special Court for NDPS Cases, Madurai and the same was dismissed on 29.03.2022. The respondent arrested the petitioner on 07.07.2022,

<https://www.nhc.tn.gov.in/judis>



in another case in Crime No.434 of 2021, on the Palayamkottai Police Station and Goondas Act was initiated against the petitioner and the same was revoked by this Court in H.C.C.(C) No.1714 of 2021, dated 08.06.2022. In this case, already charge sheet was filed in C.C.No.147 of 2021, hence, there is no necessity for custodial interrogation. The co-accused were already released on bail by the lower Court and one of the accused was released on anticipatory bail by this Court. The petitioner was not the prime accused in any of the previous cases. The petitioner has to undergo appendix operation. Though this Court has given a direction to the lower Court to dispose of the case within a period of two months, the trial was not yet commenced. Hence, he prayed the petitioner to be released on bail.

4. On the side of prosecution, it is stated that the petitioner is having five previous cases, out of which, two cases are similar in nature, a case in Crime No.720 of 2016 under Section 20(b)(ii)(A) of NDPS Act was ended in conviction. The petitioner also involved in another case under Section 302 IPC in Crime No.182 of 2019, on the file of Murappanadu Police Station. The petitioner is a habitual offender and he is not entitled for bail under Section 37 of NDPS Act. Once a person is convicted under NDPS Act, he is not entitled for bail. It is further stated that NBW was issued against A1 and hence, the trial could not be commenced. The copy of the case status was filed on the side of the prosecution. The details of the previous case history was filed. The respondent Police is ready to complete the trial within three months and prayed the petition to be dismissed.

5. On the side of prosecution, a judgment of the Supreme Court reported in **1999-9-SCC-429 (Union of India V. Ram Samujh and another)**, wherein, it is stated as follows:-

"It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable: it causes deleterious effects and 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."

6. On the side of prosecution, another judgment of the Supreme Court reported in **2001-7-SCC-673 (State of M.P. V. Kajad)**, wherein, it is stated as follows:-

"The purpose for which the Act was enacted and the menace of drug trafficking which intends to curtail is evident from its scheme. A perusal of Section 37 of the Act

leaves no doubt in the mind of the court that a person



accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be released on bail. Negation of bail is the rule and its grant and exception under sub clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for."

7. On the side of prosecution, another judgment of the Supreme Court reported in **2021-4-SCC-781 (Sudha Singh V. State of U.P.)**, wherein, it is stated as follows:-

8. This Court in *Neeru Yadav vs. State of U.P.*¹ held that when a stand was taken that the accused was a history sheeter, it was imperative for the High Courts to scrutinise every aspect and not capriciously record that the accused was entitled to be released on bail on the ground of parity.

9. In *Ash Mohammad vs. Shiv Raj Singh*², this Court observed that when citizens were scared to lead a peaceful life and heinous offences were obstructions in the establishment of a well-ordered society, the courts play an even more important role, and the burden is heavy. It emphasized on the need to have a proper analysis of the criminal antecedents of the accused.

8. On the side of prosecution, another judgment of the Supreme Court reported in **2010-14-SCC-496 (Prasanta Kumar Sarkar V. Ashis Chatterjee and another)**, wherein, it is stated as follows:-

"...It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;



(vii) reasonable apprehension of the witnesses influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

9. On the side of prosecution, a judgment of the Supreme Court reported in **2009-8-SCC-539 (Karnail Singh V. State of Haryana)**, wherein, it is stated as follows:-

"35. While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001."

10. A perusal of the records it reveals that one of the accused remained absent and NBW was issued on 22.11.2022. It is seen that the petitioner is having 9 previous cases, of which, three cases are relating to NDPS Act and one case is relating to 302 offences. There is an earlier conviction under the NDPS Act.

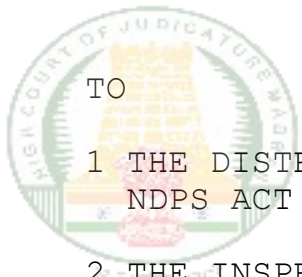
11. Considering the judgment cited on the side of the prosecution and considering the fact that there is no change of circumstances, this Court is not inclined to release the petitioner on bail. Hence, the petition is dismissed.

12. The learned District and Sessions Judge, NDPS Act cases, Madurai, is hereby directed to split up the case with regard to the accused against whom NBW was issued and proceed with the trial and dispose of the case in CC.No.147 of 2021 within a period of three months. The prosecution is directed to produce the witness in time.

sd/-
29/11/2022

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



TO

- 1 THE DISTRICT AND SESSIONS JUDGE,
NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
MUNEERPALLAM POLICE STATION,
TIRUNELVELI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP (MD) No.20968 of 2022
Date :29/11/2022

Rmk

MK/VR/SAR III/07.12.2022/5P/5C