



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 22.12.2022

PRESENT

WEB COPY

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL.O.P(MD)No.22145 of 2022

Ashif Raja

... Petitioner/Accused No.1

Vs

State Rep.by
The Inspector of Police,
Thanjavur Town South Police Station,
Thanjavur District.
Crime No.1033 of 2022.

... Respondent/Complainant

For Petitioner : Mr.K.Mu.Muthu, Advocate
For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No.1033 of 2022 on the file of the Respondent Police.

O R D E R

The petitioner, who was arrested and remanded to judicial custody on 25.08.2022 for the offence punishable under Sections 8(c) and 20(b)(ii)(c) of NDPS Act in Crime No.1033 of 2022 on the file of the respondent police, seeks bail.

2.The learned Counsel for the petitioner would submit that the petitioner is an innocent and he has been falsely implicated in this case. He would further submit that being a Driver of the vehicle bearing TN-52-F-3256, the petitioner has nothing to do with the alleged offence and he has not an owner of the vehicle. The learned Counsel for the petitioner would further submit that the mandatory provisions regarding search and seizure have not been complied with by the respondent and that arrest and recovery is illegal. He would further submit that the petitioner is in judicial custody from 25.08.2022 and he would seek for bail.

3.In reply, the learned Additional Public Prosecutor would submit that this is the second application for bail and this Court finding that the quantity involved in this case is a commercial quantity, by order, dated 21.11.2022, had dismissed the earlier petition in Crl.O.P.(MD)No.19214 of 2022. Further, he would submit



that there is no change of circumstances in this case. I also submit that in this case two vehicles were involved and 128 kgs of kanja in total were recovered. Asfaras this petitioner is concerned, 93 kgs of kanja were recovered from his vehicle.

4. He would also rely upon the judgment of Honourable Apex Court in the case of **Union of India vs Mohamed Nawaz Khan** reported in **(2021) 10 SCC 100**, wherein, it has been held that absence of possession of the contraband on the person does not absolve it of the level of scrutiny required under **Section 37(1)(b)(ii)** of the NDPS Act.

5. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

6. In this case, the contraband involved is 128 Kgs of Kanja and thereby, this Court has to satisfy itself regarding Section 37 of NDPS Act. Considering the gravity and nature of the offence and also considering the quantity of ganja involved in this case is a commercial quantity and also the fact that there is no change of circumstance after the dismissal of the earlier application for bail, this Court is not inclined to grant bail to the petitioner. Hence, this Petition is dismissed.

(*) 7. However, the learned Additional District Judge/Presiding Officer, Special Court under Essential Commodities Act, Thanjavur, is directed to complete the trial in Crime No.1033 of 2022, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

sd/-

22/12/2022

(*) FOR BEING MENTIONED, AS PER THE ORDER OF THIS HONOURABLE COURT DATED 23/01/2023 IN CRL OP(MD) No.22145 of 2022.

/ TRUE COPY /

/01/2023

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

cmr

To

1 THE INSPECTOR OF POLICE
THANJAVUR TOWN SOUTH POLICE STATION, THANJAVUR DISTRICT.



2 THE OFFICER INCHARGE, DISTRICT JAIL, THANJAVUR.

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

WEB COPY
COPY TO:

ADDITIONAL DISTRICT JUDGE/PRESIDING OFFICER,
SPECIAL COURT UNDER ESSENTIAL COMMODITIES ACT,
THANJAVUR.

+1 CC to M/s.K.MU.MUTHU, Advocate (SR-15401[I] dated 23/12/2022)

ORDER IN
CRL OP (MD) No.22145 of 2022
Date :22/12/2022

SJI
VA/MMS/SAR.4 (04.02.2023) 3P-6C