



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 14.03.2023

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PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP (MD) .Nos.356,408,498/2023, 23137/2022, 410/2023

Aathiraja	...Petitioners/Accused No.3 in Crl.O.P (MD)No.356/2023
Jeyaprakash	...Petitioner/Accused No.4 in Crl.O.P (MD)No.408/23
Guna @ Gunasekaran	...Petitioner/Accused No.6 in Crl.O.P (MD)No.498/23
Ravi	...Petitioner/Accused No.5 in Crl.O.P (MD)No.23137/22
Prema	...Petitioner/Accused No.2 in Crl.O.P (MD)No.410/23
Vs	
State Rep.by The Inspector of Police, Alanganallur Police Station, Madurai District. (Crime No.186 of 2022)	... Respondent/Complainant in All Petitions

For Petitioner
in Crl.O.P (MD)No.356/23 : Mr.S.Muniyandi, Advocate
For Petitioner
in Crl.O.P (MD)No.408/23 : Mr.M.Jegadeesh Pandian, Advocate
For Petitioner
in Crl.O.P (MD)No.498/23 : Mr.A.Senthilkumar, Advocate
For Petitioner
in Crl.O.P (MD)No.23137/22 : Mr.M.Subash Babu, Senior Counsel
For Petitioner
in Crl.O.P (MD)No.410/23 : Mr.M.Jegadeesh Pandian

For Respondent : Mr.T.Senthil Kumar,
in all petitions Additional Public Prosecutor



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

COMMON PRAYER :-

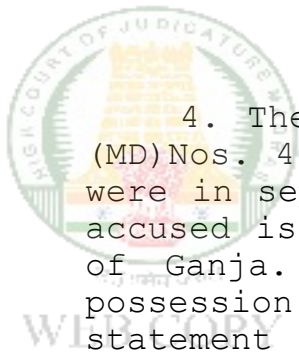
To enlarge the Petitioners on bail in Crime No.186 of 2022 on the file of the respondent police.

COMMON ORDER : The Court made the following Common order :-

The petitioner in CrI.O.P(MD)No.356 of 2023 was arrested and remanded to judicial custody on 11.07.2022 and all other petitioners were arrested and remanded to judicial custody on 10.07.2022 for the offence punishable under Sections 8(c) r/w.20(b)(ii)(c) 25 of NDPS Act in Crime No.186 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 10.07.2022 at about 16.00 hrs, the Sub Inspector of Police, Ganeshnagar Police Station had received a secret information, based on that they took an inspection at about 16.20 hours near a grave yard, Sangaiya Nagar, Pothumbu, where they found two persons pass on the road bearing Reg.No.TN-58-AW-2398 Bajaj CT 100 and they were apprehended namely Rajaram and Prema (husband and wife), on enquiry they have seized 5 kilograms of ganja and they were arrested in the occurrence spot, Subsequently, a confession statement was recorded from Rajaram/A1, based on that at about 19.50 hrs accused No.1 alleged to have been identified one Athiraja at Kamalapatti, tank edge, from him they have seized 4 kilograms of ganja. Thereafter, on confession of Athiraja/A3, they went to the house of one Jeyaprakash, S/o.Murugan at Kallapanpatti and they found Jeyaprakash, from whom, the team recovered 2 kilograms of ganja. Subsequently, on confession of Jeyaprakash, the team went to the house of one Ravi at Peyyampatti on 11.07.2022 at about 00.15 hrs, and they recovered 10.500 kilograms of ganja and the same was seized after taking samples. Thereafter, the respondent police had brought the accused Nos.1 to 5 to the respondent police and registered the case in Crime No.186 of 2022 under Sections 8(c) r/w 20(b)(ii)(c) of NDPS Act and Section 25 of NDPS Act by arraying accused Nos.1 to 5.

3. Mr.Subash Babu, learned Senior Counsel for the Accused No.5 submitted that as per the confession statement of A4, the fifth accused was found in possession of 10.500 kg of Ganja. Though the petitioners purchased the contraband from one Guna @ Gunasekaran along with A4, they were found in separate possession of contraband. It is below commercial quantity. Now the case has been charge sheeted and the same has been taken cognizance in C.C.No.1014 of 2022 on the file of the EC and NDPS Court, Madurai.



4. The learned counsel for the Accused Nos.2 and 4 in CrI.O.P (MD)Nos. 408 and 410 of 2023 submitted that all the accused persons were in separate possession of contraband and insofar as the second accused is concerned, along with A1, she was in possession of 5 kg of Ganja. Insofar as the 4th accused is concerned, he was in possession of 2 kg of Ganja. That too as per the confession statement of co-accused. He was found in possession of contraband. Those contrabands were below commercial quantity. Therefore, it cannot be said that all the accused persons were under concession joint possession of contraband.

5. The learned counsel for the Accused No.6 in CrI.O.P.498 of 2023 submitted that only on the basis of the co-accused, he was implicated as Accused No.6. In the present case, there was no contraband recovered from him. In fact, he was arrested and remanded to judicial custody in pursuant to the Non Bailable Warrant issued by the trial Court in C.C.No.3 of 2021, NDPS Court, Thanjavur. That apart, there is no charge under Section 29 of NDPS Act. He would further submit that in order to connect the petitioners, there is absolutely no material. Though A6 has been implicated in 10 previous cases, in all the cases only on the confession statement of co-accused, he had been implicated, as an accused and thereafter, acquitted from the trial Court. In the present case also, the accused No.6 has been implicated as an accused on the strength of the confession of the co-accused and there was no contraband recovered from the accused No.6.

6. The learned counsel appearing for the petitioner in CrI.O.P (MD)No.356 of 2023/A3 would submit that the third accused has been implicated in this case based on the confession of the co-accused and there is no material available as against the third accused for transporting the contraband and he would pray for bail.

7. Per contra, the learned Additional Public Prosecutor submitted that all the accused persons were found in possession of contraband weighing 21.500 kg of Ganja, which is commercial quantity. There is bar under Section 37 of NDPS Act and they are not entitled for bail and Section 37 (B) of NDPS Act is very much clear that no person accused of an offence punishable under Section 19 or Section 24 or Section 27-A of NDPS Act and also for offences involving commercial quantity. Thus it is clear that those who involving in the case of commercial quantity, there is a bar under Section 37 of NDPS Act. Therefore, they are not entitled for bail. He also relied upon the judgment of this Court, in which, this Court in CrI.O.P(MD)Nos.172, 1621, 1628 and 2119 of 2021 dated 30.04.2021, wherein, it had been held that if it is established that the contrabands were recovered from multiple accused concerned in a case in the course of same transaction, it cannot be split up individually and the entire contraband seized from one or several accused have to be taken into consideration for determining whether the contraband seized is commercial quantity or not.

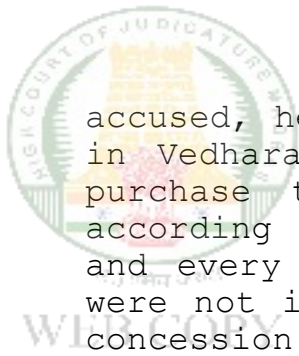


8. The learned Additional Public Prosecutor further submitted that as far as the second accused is concerned, she was not involved any previous case. Insofar as the third accused is concerned, he was already involved in two previous case and the accused No.4 is concerned, he already engaged in one previous case. Insofar as the accused No.6 is concerned, so far, he involved nine previous cases, out of which, seven cases arising out of NDPS Act and two are under COTPA Act. Therefore, he vehemently opposed to grant bail to the petitioners.

9. Heard and perused the materials available on record.

10. Admittedly, A1 and A2 were found in possession of 5 kg of Ganja. The contraband was seized from them by seizure mahazar. Thereafter, the samples were taken and it was sent for chemical analysis. On the confession statement of A1 and A2, the third accused was found in possession of contraband weighing 4 kg. The said contraband was seized by seizure mahazar and the samples were sent to chemical analysis. Again on the confession statement of third accused, the accused No.4 was found in possession of weighing 2 kg of Ganja and on the confession statement of the 4th accused, the 5th accused was in possession of weighing 10.500 kg of Ganja. On the strength of the confession statement of the accused No.5, the accused No.6 has been implicated as an accused. No recovery was made from A6. Though all the accused persons were found in possession of ganja in single date within a time of 1 and 1 ½ hours, the entire contraband were seized by separate mahazar. Now only point consideration is that all wherein concession and constructive joint possession of contraband or not?

11. On perusal of charge sheet, it is seen that each and every accused were found in possession of ganja and search memo and the contraband were seized by separate mahazar. On perusal of confession statement of A4- Jeyaprakash revealed that he had acquaintance with the third accused. While he was going to Vedharanyam for loading, he had acquaintance with the 6th accused. A6 used to purchase ganja from various places and supplied ganja to various persons. He further confessed that he purchased contraband from A6 and kept the same in the house of the 5th accused. Thereafter, he had given a part of the Ganja to the third accused and he was in possession of 2 kg of Ganja. Whereas, on perusal of the confession statement of the 5th accused revealed that he had acquaintance with the 4th accused and he used to purchase Ganja from Andhra Pradesh. After purchase of contraband from Andhra Pradesh, he had kept it in the house of the 5th accused and he had taken part of Ganja for sale. Likewise, on perusal of the 6th accused, FIR revealed that the 4th accused purchased the contraband from Andhra Pradesh and thereafter, sold to various persons. Admittedly, the FIR was registered after recording the confession statement from the 4th accused. Therefore, as per the confession statement of the 4th



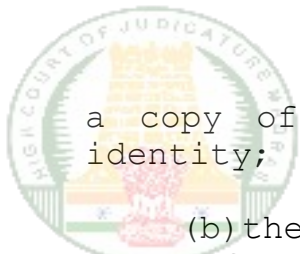
accused, he used to purchase contraband from the 6th accused is in Vedharanyam, whereas, as per the FIR, the 4th accused used to purchase the contraband from Andhra Pradesh. That apart, even according to the confession statement of the accused persons, each and every accused was entrusted the contraband individually. They were not in joint possession of contraband. Therefore, there is no concession or joint possession of contraband. Therefore, the judgment cited by the learned Additional Public Prosecutor is not applicable in the case on hand. Since all the accused persons were found in possession of contraband separately and all the contraband were seized by separate seizure mahazar, there is absolutely no evidence to connect all the accused persons, except the confession statement, in order to say that the contraband seized from all the accused persons are concession and joint possession to attract commercial quantity. Therefore, there is no bar under Section 37 of NDPS Act, considering the applications of bail of the petitioners.

12. Insofar as the previous antecedents are concerned, the 6th accused already involved nine previous cases, in which, seven cases under NDPS Act. However, he was acquitted from many number of cases and he has been implicated as an accused on the strength of confession statement of co-accused persons. In fact, in the present case, he was arrested even on 04.07.2022 itself, in pursuant to the execution of Non Bailable Warrant issued by the NDPS Court, Thanjavur. There was no contraband recovered from A6. That apart, they were arrested and remanded to judicial custody on 10.07.2022 and now the respondent completed the investigation and filed a final report and the same has been taken cognizance in C.C.No.1014 of 2022 on the file of the NDPS Court, Madurai and it is pending for trial. So far no witness has been examined by the prosecution.

13. Taking into consideration of the facts and submissions made by the learned counsels and also taking into consideration the period of incarceration, this Court is of the opinion that rigor of section 37 of the NDPS Act will not be applicable to the petitioners, hence this Court is inclined to grant bail to the petitioners subject to the following conditions:

14. Accordingly, the petitioners shall donate a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each to the credit of the RAY OF LIGHT FOUNDATION, A/C No.50100078904233, IFSC Code ; HDFC0001864, No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600 034, Ph.No.8939065431 and on such donation the petitioners are ordered to be released on bail on condition to execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), each with two blood related sureties each for a like sum to the satisfaction of the Principal Special Court for Trial of NDPS Act Cases, Madurai, and on further conditions that:

(a) the sureties shall affix their photographs and Left Thumb
<https://www.mca.gov.in/> in the surety bond and the learned Magistrate may obtain



a copy of their Aadhar Card or Bank Pass Book to ensure identity;

(b) the petitioners shall report before the Principal Special Court for Trial of NDPS Act Cases, Madurai, daily twice i.e. at 10.30 a.m., and 05.00 p.m., on all working days until further orders;

(c) the petitioners shall not commit any offences of similar nature;

(d) the petitioners shall not abscond either during investigation or trial;

(e) the petitioners shall not tamper with evidence or witness either during investigation or trial;

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

(g) if the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-

14/03/2023

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/03/2023

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

VSD

TO

1 THE PRINCIPAL SPECIAL JUDGE
FOR TRIAL OF NDPS ACT CASES, MADURAI.

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

3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

4 THE OFFICER INCHARGE
CENTRAL PRISON, PUDUKKOTTAI.

<https://www.mhc.tripura.gov.in>



5 THE OFFICER INCHARGE
SPECIAL PRISON FOR WOMEN, MADURAI.

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

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COPY TO

THE OFFICER INCARGE
RAY OF LIGHT FOUNDATION
NO.10, NAGESWARA ROAD, NUNGAMBAKKAM,
CHENNAI, TAMIL NADU 600 034.
PH NO. 8939065431

+1 CC to M/s.S.MUNIYANDI, Advocate (SR-4203[I] dated 14/03/2023)
+1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-4189[I]dated
14/03/2023)

+1 CC to M/s.C.SUSIKUMAR, Advocate (SR-4188[I] dated 14/03/2023)
+1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-4187[I] dated
14/03/2023)

ORDER
IN
CRL OP(MD) .Nos.356,408,498/2023,
23137/2022, 410/2023
Date :14/03/2023

PKP/MMS/SAR- /15.03.2023/ **7P/ 12C**