



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 20/02/2023

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PRESENT

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

CRL OP(MD). No.493 of 2023

Guna @ Gunasekaran, ... Petitioner/Accused No.5

Vs

State Rep.by
The Inspector of Police,
Othakadai Police Station,
Madurai District.
Crime No.189 of 2022.. ... Respondent/Complainant

For Petitioner : M/s.Senthilkumar A,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.189 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A5, who was arrested and remanded to judicial custody on 21.06.2022 for the offences punishable under Sections 8(c) r/w.20(b)(ii)(c), 25,29(i) of NDPS Act in Crime No.189 of 2022 on the file of the respondent police, seeks bail.

2. Notice was issued to the learned Additional Public Prosecutor and counter was filed by the prosecution.

3. The case of the prosecution is that on 21.06.2022 at about 18.40 hrs during vehicle check up the Joint Commissioner of Madurai Division intercepted the vehicle bearing Reg.No. TN 58 BE 9688 (Mahindra Dosth Lorry) at Madurai - Trichy bypass road near Vandiyur Toll gate, but the driver did not stop the lorry, hence the

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High Court building. Further, on search it was found that only 1000kgs of kanja worth about Rs.1,50,00,000/- was found loaded in the said lorry. Thereafter, the officials handed over the petitioner along with contraband and vehicle to the respondent police. The respondent police registered a case and later during investigation, the respondent police came to know that A5 and A2 usually purchase kanja from A3 of Andhra Pradesh and the contraband was transported from Andhra Pradesh to Madurai in a vehicle bearing Reg. No. TN 32AJ 4127 Ashok Leyland and thereafter, it was loaded in Mahindra Dosth vehicle, which was driven by A1 and A4. After completing the procedures as contemplated under the NDPS Act, the respondent police seized the contraband and vehicle from A1 and arrested him. During investigation it came to light that all the accused have actively involved in drug trafficking. Further call details and CDR report discloses that the petitioner along with accused were in constant touch and involved in illegal transport of kanja which is a commercial Quantity hence the case.

4. (i) The learned counsel for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in the case. He would further submit that the alleged contraband was recovered only from A1 and not from this petitioner and the said vehicle does not stand in the name of the petitioner. He would further submit based on the alleged confession recorded from the co-accused this petitioner was implicated as an accused.

(ii) The learned counsel for the petitioner would further submit that the petitioner has got married on 14.05.2022 and his wife is a Srilankan and that on 16.06.2022, he applied VISA to Srilanka to bring her wife to Tamil Nadu. On 22.06.2022, he left to Srilanka, with an intention to return to India on 05.07.2022. Meanwhile, a non-bailable warrant has been issued against him in C.C.No.3 of 2021, on the file of Special Court for NDPS Act Cases, Thanjavur. Therefore, he returned to Tamil Nadu on 29.06.2022, where the Airport Police arrested him stating that there was a Look Out Circular issued by the Superintendent of Police, Madurai in Crime No.189 of 2022. On 30.06.2022, he was produced before the learned Judicial Magistrate, Madurai for remand. The learned Magistrate refused to remand him, since there was no material against him.

(iii) Later, the petitioner voluntarily surrendered before the Special Court for NDPS Act Cases, Thanjavur on 04.07.2022, to recall the warrant issued against him in CC No.3 of 2021 and remanded to custody. Thereafter, in Cr.No.189 of 2022 the respondent Police took A1 into police custody and during custody a confession statement was recorded from him. Based on his confession, the petitioner was implicated in the case and he was formally arrested on 08.07.2022. Other than the confession statement of the co-accused, there is no material as against the petitioner. He would further submit that the petitioner is in judicial custody from 08.07.2022 and the long incarceration before

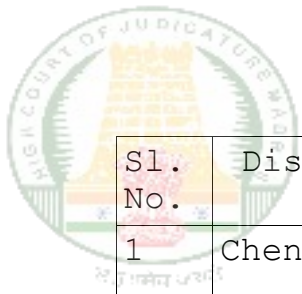


family members and that the petitioner is ready to abide by conditions that shall be imposed by this Court. Hence, he seeks bail.

5. The learned Additional Public Prosecutor would submit that the petitioner is a habitual offender involved in nine previous cases, out of which seven cases are registered for the offences under the NDPS Act. He would further submit that it is a case where huge haul of 810.350kgs of contraband of kanja was recovered, which is a commercial quantity. The petitioner along with other accused had actively involved in the transportation of drug from Andhra to Madurai in a vehicle. After coming to know of the arrest of the main accused with the contraband on 21.06.2022, the petitioner has left to Srilanka. There are call records between the petitioner and the other accused to show that they have been in constant touch with each other and the remand report of the other arrested accused was conveyed to the other accused through his mobile phone and he had asked them to be careful. He would further submit that, it is a case of recovery of huge quantity of kanja, ie., 810.350 kgs of kanja. The respondent Police has also sought for extension of time for continuing the investigation in the case. At this stage, if bail is granted to the petitioner, there is every possibility of him absconding and tampering the material evidence, which will hamper the case of prosecution. There is ample materials to connect the petitioner with the crime and *prima facie* is made out against the petitioner. There are call records to show that the petitioner is also the member of the gang and the petitioner was in close touch with the other accused during the transport. He would further submit that the petitioner was in the vicinity. Further the petitioner being a habitual offender involved in Narcotics case shall not be entitled for grant of bail in view of the bar under section 37 of the NDPS Act. Hence he strongly opposed to grant bail to the petitioner/accused.

6. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and perused the materials available on record and the counter filed by the respondent.

7. It is the case where the petitioner along with other accused had transported 810.350kgs of kanja, Which is a Commercial quality. Further it is stated that during the transit of contraband the accused have been in constant touch through mobile phone and there are call records to substantiate the same. Further it is alleged by the prosecution that the petitioner is a habitual offender and against whom there are nine previous cases pending and out of which seven cases are registered for the offences under the NDPS Act. The details are listed hereunder :



Sl. No.	District	Police station & Crime No.	Offence U/S
1	Chennai	NIB CID Cr.No - 21/2018	8(c), r/w 20(b) (ii) © & 25, 27, 29(1) NDPS Act
2	Dindigul	NIB CID Cr.No - 132/2016	8(C), r/w 20(B) (II) (c) & 25 NDPS Act.
3	Madurai	NIB CID Cr.No - 48/2018	8(C), r/w 20(B) (II) (c) & 25, 29 (1) NDPS Act.
4	Nagapattinam	NIB CID Cr.No -14/2020	8(C), r/w 20(B) (II) (c) & 25, 29 (1) NDPS Act.
5	Trichy	NIB CID Cr.No -59/2018	8(C), r/w 20(B) (II) (c) & 25 NDPS Act.
6	Madurai District	Usilampatti Town PS Cr. No. 298/18	8(C), r/w 20(B) (II) (c) & 29(1) NDPS Act
7	Madurai District	Alanganallur PS Cr.No. 186/22	8(c), r/w 20(b) (ii) (c) & 25B(c) NDPS ACT
8	Thoothukudi	Thiruchandur PS Cr.No. 262/22	294(b), 353 IPC 245 (1) COTPA Act
9	Theni	Palanichettiyapatti PS Cr. No. 255/2022	272, 273, 328 IPC 24(1) COTPA Act.

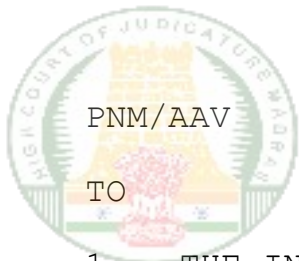
8. It is also alleged by the prosecution that the petitioner was in touch with the other accused through mobile phone and that he was also found in the vicinity and he has also forwarded the remand report of the arrested accused to other accused, who were at large in WhatsApp. When the contraband is the commercial quantity the petitioner has to satisfy section 37 of the NDPS Act and the petitioner having been a habitual offender involved in NDPS offence and as per the prosecution there are ample evidence to connect the petitioner along with the other accused to the crime. Further in the opinion of this Court, the petitioner has not satisfied the conditions as required under the mandate of section 37 of the NDPS Act for grant of bail.

9. In the result, the Criminal Original Petition stands dismissed.

sd/-
20/02/2023

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/03/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



- 1 THE INSPECTOR OF POLICE
OTHAKADAI POLICE STATION, MADURAI DISTRICT.
- 2 THE OFFICER INCHARGE
DISTRICT PRISON,
PUDUKKOTTAI
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP (MD) No.493 of 2023
Date :20/02/2023

PKP/VR/SAR-4/28.02.2023/5P/4C