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CRL OP(MD)



23

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 10.04.2023

PRESENT

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

CRL OP(MD)No.5894 of 2023

Kubendran

... Petitioner/Accused No.6

Vs

State.thro.

The Inspector of Police,

NIB-CID, Trichy,

Cr.No.20 of 2021

... Respondent/Complainant

For Petitioner : M/S.A.Devaki, Advocate

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.20 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner /A6, who was arrested and remanded to judicial custody on 21.07.2022 for the offence under section 8(c), 20(b) (ii) (c) and 25 of NDPS Act in Crime No.20 of 2021 on the file of the respondent police seeks bail.

2.The case of the prosecution is that on 21.09.2021, the respondent police conducted vehicle check-up at Samayapuram Weekly Market. At that time, the lorry driver one Moovendran and one Prabhu tried to escape from the scene, however, the respondent surrounded and apprehended them. The respondent police seized 132 kgs of ganja. Hence the case.

3.The learned counsel appearing for the petitioner would submit that the petitioner is none other than the brother of A1. Except that relationship, there is nothing happened as alleged by the prosecution. Even according to the prosecution, entire ganja was

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seized from A1, when he was in Trichy. At that junct the petitioner was already arrested and remanded to judicial custody and therefore, there was no possibilities for conspiracy in order to purchase or sell the ganja. In fact, A3 to A5 were already granted bail.

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4.The learned Additional Public Prosecutor appearing for the respondent police would submit that though this Court granted bail to the co-accused, the petitioner herein stood in a different footing, since the petitioner is none other than a brother of A1 and he was involved in similar offence, for which a case was also registered in Cr.No.14 of 2021 and he was arrayed as A1.

5.Heard both sides and perused the materials available on record including the First Information Report.

6.It is seen that there are totally 6 accused in this case and the petitioner herein is arrayed as A6. Admittedly, the petitioner has been implicated as an accused on the basis of confession statement of the co-accused and no contraband was seized from the petitioner. That apart, the petitioner was in custody at the time of arresting of A1. Therefore, except phone call details between A1 and the petitioner, there is no other materials produced by the prosecution in order to implicate the petitioner as an accused. Therefore, the petitioner made out a *prima facie* case in order to satisfy the two conditions as contemplated in the Section 37 of NDPS Act.

7.Taking into consideration of the above facts and circumstances and also the period of incarceration, this court is inclined to grant bail to the petitioner subject to the following conditions:

[a] Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two blood sureties each for a like sum to the satisfaction of the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC & NDPS Act Cases, Pudukkottai and on further conditions that:

[b] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity.

[c] the petitioner shall report before the trial Court on all working days at 10.30 A.M., until further orders.

[d] the petitioner shall not commit any offences of similar nature.



[e] the petitioner shall not abscond either during investigation or trial.

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[g] On breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner 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].

[h] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
10/04/2023

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10/04/2023

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

gns

TO

1.THE ADDITIONAL DISTRICT AND SESSIONS JUDGE/PRESIDING OFFICER,
SPECIAL COURT FOR EC & NDPS ACT CASES, PUDUKKOTTAI.

2.THE SUPERINTENDENT,
CENTRAL PRISON,
CHENNAI.

3.THE INSPECTOR OF POLICE,
NIB-CID, TRICHY.

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

+1 CC to M/s.DEVAKI A, Advocate (SR-5594[I] dated 10/04/2023)

ORDER
IN
CRL OP(MD) No.5894 of 2023
Date :10/04/2023

RK/SSS/SAR-(10/04/2023) 4P/6C

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