



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 09.02.2023
Delivered on : 09.03.2023
PRESENT

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The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.1350 of 2023

Leo Rozario

... Petit ioner/Accused No.2

VS.

Senior Intelligence Officer,
Directorate of Revenue Intelligence,
No.22/14, Celin Garden, Roche Colony,
South Beach Road,
Tuticorin - 628 001.
F.NO.DRI/CZU/MDU/VIII/48/ENQ-01/INT-04/2021

... Respondent/Complainant

For Petitioner : Mr.R.C.Paul Kanagaraj, Advocate

For Respondent : Mr.C.Arul Vadivel @ Sekar,
Special Public Prosecutor for
DRI Cases.

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

PRAYER : For Bail in C.C.No.315 of 2022 on the file of the Additional District Judge/Presiding Officer/ Principle Special Court for EC & NDPS Court, Madurai.

ORDER : The Court made the following order :-

The petitioner/A.2, who is facing a case for the offences punishable under Sections 8(c) r/w 23(c), 25, 28 and 29 of Narcotic Drugs and Psychotropic Substances Act, in C.C.No.315 of 2022 on the file of the learned Additional District Judge/Presiding Officer/ Principle Special Court for EC & NDPS Court, Madurai, in F.No.DRI/CZU/MDU/VIII.48/ENQ/INT-04/2021, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on receipt of specific information that Cocaine weighing around 300 kgs was arriving at Tuticorin Port in the vessel Cotopaxi in container No.CAXU9986891, the above container which arrived at Tuticorin Port on 20.04.2021 was taken up for examination at M/s.DBGT Terminal, that the Bill of



Lading No.MEDUPA022615 issued by M/s.Mediterranean Shipping S.A., covered six 40' containers, including the above container, declared to contain 'teak round logs', that as per the bill of lading consignee was M/s.Sri Jeyasakthi Timper Traders, No.1/1020, Courtallam Road, Shencottai and the liner/container No.CAXU9986891 was EU19387527 and it tallied with seal number on the above container, that they have found in the container round logs stacked in four rows and after the front row there was a gap of few feet and in the gap nine big travel bags, locked with plastic zip tie, were found lying, that the Surveyor N.Renganathan, surveyed the above container and gave opinion that the container had not been tampered with, that all the nine bags were recovered and all the bags were found to contain rectangular shaped packets wrapped with brown color cellophane tape and the packets wrapped with multilayer transparent polythene film, that the officers, on opening the final layer of packing found rectangular shaped bar made of compressed white color powder like substance, that when a small quantity of said powder was tested with the help of Narcotic Drugs Detection Kit, the same tested positive for Cocaine, that all the packets were opened and found to contain bars made of compressed white color powder, that during examination of the contents of the bag A4 an unused yellow color one Time Liner Seal No.EU19387527, which was the same as the one One-Time Liner seal originally found on the above container No.CAXU9986891, was found and recovered, that 302 rectangular shaped bars in 9 bags, totally weighing 303.403 kgs of Cocaine were seized and recovered under the provisions of NDPS Act, 1985 r/w Customs Act, 1962 under mahazar proceedings dated 21.04.2021 and that they have also recovered teak round logs used as cover cargo for smuggling of Cocaine measuring 15.8380 CBM.

3. It is the further case of the prosecution that during the course of investigation, they found that the arrival of the above container bearing No.CAXU9986891 at Tuticorin was monitored on 19th and 20th April 2021 ie., before and during arrival of the said vessel Cotapaxi from a static IP address "182.19.47.241", which was ascertained to be allotted by M/s.Vodafone Idea Limited to M/s.Expo Freight Private Limited, Chennai and that they have also found that a MAC ID "18:B1:69:91:EE:02" was being used for communication through the said IP address.

4. It is their further case that they have ascertained from M/s.Bharti Airtel Limited that the above said container had also been tracked from the IP address 27.62.113.152. mobile No.95000 53502 (Airtel), which pertained to G.Sathish Kumar, an Executive of M/s.Expo Freight Private Limited, Chennai, that the said Sathish Kumar was orally summoned and interrogated and at that time, he gave a statement dated 17.11.2021 under Section 67 of NDPS Act stating that he received a call on 19.04.2021 from the petitioner, who is the Branch Manager of M/s.Expo Freight Private Limited and asked him to track the container bearing No.CAXU9986891, that he tracked the container in the office computer and intimated the status to



the petitioner over phone, that on 20.04.2021 the petitioner called him around 11.00 am and asked him to track the said container and he tracked the container and updated the status, that again the petitioner had contacted him and asked him to track the same container and he tracked again and intimated the same to the petitioner, that again the petitioner had directed him to track the same container and he tracked the same from his mobile phone and took screen shot of the same and shared it through whatsapp to the petitioner and that since he was a subordinate to the petitioner, he had followed the orders of his superiors and he was not aware of any other particulars regarding the consignment.

5. It is the further case of the prosecution that thereafter, they have summoned the petitioner and interrogated him, that the petitioner in his statement under Section 67 of the NDPS Act, had admitted that he alone had directed the subordinate Sathish Kumar to track the said consignment, that he had deleted the messages and media files for the dates 19.04.2021 and 20.04.2021, that in the second week of April 2021 he met one Shri.Rashid, who was acquainted to him after a long time, that the said Rashid had directed him to track the consignment, which contains Cocaine and assured him to give good monetary benefits, that he did not know whereabouts of the said Rashid and he has also not known the said phone number of the said Rashid and that thereafter, considering the seriousness and gravity of the offence and based on the grounds of conspiracy established against the petitioner in tracking the container with huge consignment of Narcotic Drugs, the petitioner was arrested on 19th November 2021 for contravention of Section 29 of the NDPS Act and he was remanded to judicial custody.

6. The case of the petitioner is that the petitioner is innocent and he has not committed any offence as alleged by the prosecution, that the petitioner is a B.A. Graduate and his wife is working as a teacher in Good Shepherd Convent Chennai, that the petitioner is having two children (1 boy and 1 girl), his son is studying 10th standard at Don-Bosco School and his daughter studying 8th standard in Good Shepherd Convent Chennai, that the petitioner was an employee of M/s.Expo Freight Private Limited, Chennai, that the petitioner is in the field of logistics for the past 25 years working with unblemished record, that arrest of the petitioner ruined his family and that the petitioner was never at fault and never got any monetary benefit.

7. It is further case of the petitioner that the petitioner is neither consignor nor the consignee of the container No.CAXU9986891, that the contents of the container does not belong to him, that the petitioner had tracked the consignment as a routine office business, that since the petitioner being in the business of Logistics, he was used by the culprits to ascertain the movements of the container, that the petitioner was not paid any amount for tracking the vessel and the consignment, that the respondent has not produced any *prima*



facie evidence to show the conspiracy and that the petitioner is been falsely implicated in the above case.

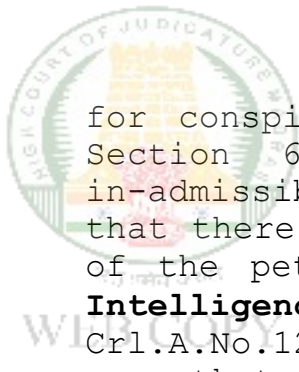
8. The learned counsel appearing for the petitioner would contend that the petitioner's earlier bail application filed during the pendency of investigation was ordered to be dismissed, that the respondent, after completing the investigation, has filed a complaint and the same was taken on file in C.C.No.315 of 2022 on the file of the Principle Special Court for EC & NDPS Act Cases, Madurai, that the person, who allegedly gave instructions to track the consignment, Rashid was not at all secured till now, that the petitioner is in judicial custody from 19.11.2021 and that therefore, the petitioner may be enlarged on bail by imposing strict conditions.

9. The learned Special Public Prosecutor appearing for the respondent would submit that the petitioner had directed his supporting staff Sathish Kumar to track the consignment and in pursuance of the direction of the petitioner alone, the said Sathish Kumar had tracked the consignment and gave the particulars, that the petitioner was fully aware of the contents of the container and he had agreed to track the container and passed on the results to the persons directly involved in smuggling for monetary benefit and that therefore, the petitioner is not entitled to be released on bail.

10. It is pertinent to note that as per the reports of the respondent, there were totally 6 containers in the particular bill of lading, that the petitioner had tracked the particular container and that the petitioner has not offered any reason or explanation for the same.

11. The learned Special Public Prosecutor would further contend that the petitioner had deleted the whatsapp messages and other information relating to the tracking of the container, but he offered no reason or explanation for the said deletion, that the petitioner in his statement recorded on 17.11.2021 has specifically denied that he had directed the staff member to track the movements of the said container No.CAXU9986891 on 19.04.2021 and 20.04.2021, but when the petitioner was confronted with the statement of the said Sathish Kumar, he had admitted that the tracking details of the said container was sent to him through whatsapp by the said Sathish Kumar and that on 19.04.2021 and 20.04.2021, when the movement of the specific container containing Cocaine was tracked and that the same would clearly expose the role of the petitioner in the conspiracy.

12. The learned counsel appearing for the petitioner has relied on the judgment of the Hon'ble Supreme Court in **Tofan Singh Vs. The State Of Tamil Nadu** reported in **2021 4 SCC 1**, which was canvassed in the earlier bail petition and argued that only material available



for conspiracy is the statement of the petitioner recorded under Section 67 of the NDPS Act, that the said statement is in-admissible, as per the judgment of the Hon'ble Apex Court and that there is absolutely no iota of evidence to point out the guilt of the petitioner, and the decision in **Intelligence Officer, Air Intelligence Unit, Customs House, Chennai Vs. B.Balatheepan**, in CrI.A.No.129 of 2013, dated 25.01.2019 and in the second decision case that while confirming the appeal, this Court has observed that *mens rea* is important to convict a person accused, though he was found in possession.

13. As rightly contended by the learned Special Public Prosecutor, the aspects or points now canvassed have already been considered and the same were rejected. It is necessary to refer the following passages in the earlier order of this Court,

"20. When a similar plea was raised before this Court in batch of cases in **CrI.O.P. (MD) No.5093 of 2021 etc.**, in **Muruganandham and another vs. the State represented by the Inspector of Police, Authoor Police Station, Thoothukudi District and others**, dated 23.12.2021, this Court has observed as follows:-

"8. A learned Single Judge of this Court in **Kumar @ Ranjithkumar Vs.State** reported in **2019 (2) MWN (Cr.) 242**, after referring to the decisions of the Hon'ble Supreme Court has observed thus:

"12. A careful reading of the above judgments makes it very clear that a confession can be made admissible in evidence under Section 67 of the Act as a substantive evidence as against the maker of the statement. But, in respect of the co-accused, the said statement can never be treated as a substantive evidence. At the most, it can be considered as a relevant evidence under Section 30 of the Indian Evidence Act. On the touch stone of the law laid down by the Hon'ble Supreme Court, the confession of the co-accused can, at the best, be used or utilized in order to lend assurance to the Court. In the absence of a substantive evidence, the Court cannot proceed to convict the accused, purely on the statement of co-accused. In the instant case, the investigation has been completed and a final report has also been filed and the only material that is available against the petitioners is the statement of the co-accused and there is no other material.



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Under such circumstances, this Court is able to satisfy itself that there are reasonable grounds for believing that the petitioners are not guilty of the offence. That apart, there is no material to show that the petitioners will commit any offence, while on bail. 13. Therefore, this Court is satisfied that the petitioners have fulfilled the twin requirements of Section 37 of the NDPS Act and are therefore, entitled to be granted bail. ...
"

....

12. No doubt, the learned Additional Public Prosecutor has relied on the decision of another learned Single Judge of this Court in **Udhayavan Vs. State represented by the Inspector of Police, NIB CID, Madurai District**, in **Crl.OP(MD)No.15211 of 2020**, dated 30.04.2021, while dismissing the bail application, has held as follows:

"34. The aforesaid pronouncement of the High Courts and the Hon'ble Supreme Court makes it clear that,

1.the issue relating to compliance of mandatory procedures under the NDPS Act can be gone into only in the trial and not at the stage of considering the bail.

2.If the confessional statement of the co-accused is relevant under section 27 of Indian Evidence Act for the discovery of fact, which led to the implication of the co-accused.

3.Section 35 permits the court to presume the existence of culpable mental state and it is for the accused to prove that he had no such mental state.

4.Section 54 makes it imperative for the accused to account for the possession of any narcotic drug or psychotropic substance or controlled substance otherwise it can be presumed that the accused has committed an offence relating to the things aforesaid."

13. As already pointed out, the main contention of the prosecution is that the confession statement recorded under Section 67 of NDPS Act is admissible in evidence, or not ; is a matter to be gone into and decided at the trial, that since the statement of the



co-accused discloses the involvement of the other accused, the confession statement cannot be rejected or discarded while deciding the bail petition and that the case of the prosecution cannot be disbelieved at this point of time.

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14. As already pointed out, the Hon'ble Apex Court has specifically held that the Officers, who are invested with powers under Section 53 of NDPS Act are to be considered as Police Officers, as referred in Section 25 of the Indian Evidence Act.

15. Section 25 of the Indian Evidence Act contemplates that no confession made to a Police Officer shall be proved as against a person accused of any offence. The very object of Section 25 is to ensure that the person accused of offence would not be induced by threat, coercion or force to make a confessional statement and the Police Officer is to make every effort to collect or gather the evidence with regard to the commission of offence, but not the confession while the accused is under custody.

16. It is settled law that statements made by an accused before Police Officer, which amount to confessional statement is clearly barred under Section 25 of the Indian Evidence Act and the only exception is under Section 27 of the Indian Evidence Act, which provides that any portion of the information in the confession statement, which leads to discovery of any new fact or thing can be proved."

14. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in **Narcotics Control Bureau Vs. Mohit Aggarwal** reported in **2022 LiveLaw (SC) 613**, wherein, the Hon'ble Apex Court has specifically observed that the length of the period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

15. In the case on hand also, as rightly contended by the learned Special Public Prosecutor appearing for the respondent, the contentions put forth by the learned counsel appearing for the petitioner that the respondent, after completing the investigation, has already filed a complaint, that the petitioner has been in judicial custody since 19.11.2021 and that the case is ready for trial, cannot by themselves be treated as grounds for granting relief under Section 37 of the NDPS Act.



16. It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative and in the earlier order, this Court has observed,

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"23. It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative. It is not the case of the prosecution that the petitioner is having any previous case under the NDPS Act. Hence, the Court can very well record a finding that the petitioner is not likely to commit any such offence, after coming out on bail. But at the same time, considering the nexus between the petitioner and said Rashid and the directions issued by the petitioner to his staff Sathish Kumar to track the particular container, though there were six containers in the particular bill of lading in imports and also taking note of the deletion of media files by the petitioner sent through whatsapp by his staff Sathish Kumar and also taking note of the huge quantity of the contraband seized and also the fact that the petitioner has not chosen to furnish the particular or the whereabouts of the said Rashid, who alone had directed the petitioner to track the particular consignment for monetary benefits and that the investigation even now is in initial stage as stated by the learned Special Public Prosecutor, this Court can not record a finding that the petitioner is not guilty of such offence, at this point of time."

17. As already pointed out, in the case on hand, the respondent, after completing the investigation, has already filed a complaint and the same was taken on file and except the filing of the final report, the petitioner has not shown any change in circumstances, since the dismissal of the earlier petition.

18. As held by the Hon'ble Supreme Court, completion of the investigation and filing of the final report cannot be considered as a change in circumstances so as to enable the petitioner to seek bail.

19. Considering the above, this Court has no other option, but to say that the petitioner has failed to satisfy the first condition contemplated under Section 37 of the NDPS Act and hence, this Court concludes that the petitioner is not entitled to get the relief of bail.



20. In the result, this Criminal Original Petition is dismissed.

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09/03/2023

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

CSM

TO

- 1 THE ADDITIONAL DISTRICT JUDGE / PRESIDING OFFICER /
PRINCIPAL SPECIAL COURT FOR EC & NDPS COURT, MADURAI.
- 2 SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE,
NO.22/14, CELIN GARDEN, ROCHE COLONY,
SOUTH BEACH ROAD,
TUTICORIN - 628 001.
- 3 THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+2. CC to M/S.PAUL KANAGARAJ R.C. Advocate SR.No.3897

ORDER

IN

CRL OP(MD) No.1350 of 2023

Date :09/03/2023

SA/SBN/SAR.4/17.03.2023/9P/6C