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CRL OP(MD).



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 15/02/2023

PRESENT

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

CRL OP(MD) . No.1883 of 2023

Govindaraj

... Petitioner/Accused No.7

Vs

State Rep.by
The Inspector of Police,
NIBCID Police Station,
Dindigul,
Dindigul District.
Crime No.36/2021.

... Respondent/Complainant

For Petitioner : M/s.Karthik S, Advocate
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

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

PRAYER :-

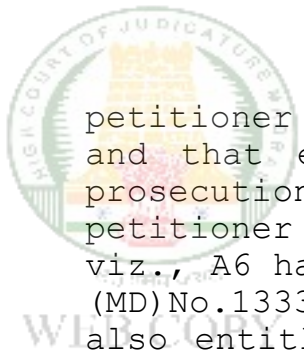
For Bail in Crime No.36/2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/Accused, who was arrested and remanded to judicial custody on 07.07.2022, for the offence punishable under Sections 8(c) r/w 20(b)(ii)(c), 25, 29(1) of NDPS Act, in Crime No. 36 of 2021, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 10.05.2021 at about 08.30 am, on receipt of secret information, the respondent police intercepted the two wheelers and a Tavera Car in Palani to Ottanchathiram Main Road at Virupatchi Kanavai Medu and found 50 kgs of Ganja in Tavera Car and arrested the accused 2 and 3 and that on the basis of the confession statement, the present petitioner/A7 and the other accused were implicated.

3.The learned counsel for the petitioner would submit that the petitioner is innocent, that he has not committed any offence as alleged by the prosecution, that there was no recovery from the



petitioner and he was not at all present in the scene of occurrence and that except the confession statement of the co-accused, the prosecution has not produced any other material to link the petitioner with the crime in question. Similarly placed accused viz., A6 has been granted bail, as per order of this Court in Crl.OP (MD)No.13334 of 2021, dated 23.12.2021 and that the petitioner is also entitled to bail on parity. The petitioner is working as a driver and he is in judicial custody from 07.07.2022. Hence, prays to release the petitioner on bail.

4.The respondent Police has filed a counter. The learned Additional Public Prosecutor submitted that the petitioner is arrayed as A7 in this case. The petitioner along with other accused have illegally transported 50 kgs of ganja in a Tavera Car. In this case, A2 and A3 were arrested on the spot and based on their confession, the petitioner and other accused persons have been implicated. Hence, he strongly opposed to grant bail to the petitioner. However, he would concede that no contraband has been recovered from the petitioner and the petitioner/A7 stands on the same footing as that of A6 in this case.

5.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6.In this case, the petitioner has been arrested based on the confession statement recorded from A2 and A3. Even as per the prosecution, the petitioner was not present at the place of occurrence and there is no recovery made from the petitioner. As rightly pointed out by the learned counsel for the petitioner, except the confessional statement of co-accused, the prosecution has not produced any materials or evidence to connect the petitioner to the crime in question. This Court in Crl.OP(MD)No.13334 of 2021, dated 23.12.2021 has granted bail, in respect of similarly placed accused/A6 and has held as follows:

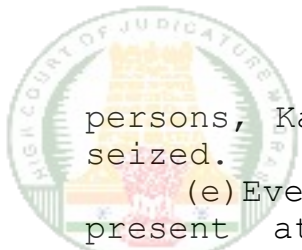
"24.Crl.OP(MD)No.13334 of 2021 :

(a).....

(b).....

(c)The learned counsel for the petitioner would submit that the petitioner is innocent, that he has not committed any offence as alleged by the prosecution, that there was no recovery from the petitioner and he was not at all present in the scene of occurrence and that except the confession statement of the co-accused, the prosecution has not produced any other material to link the petitioner with the crime in question.

(d)As rightly pointed out by the learned counsel for the petitioner, in the FIR, it was specifically stated that four persons namely, (i) Karthik S/o.Perumalsamy; (ii)Saravanan, S/o.Perumalsamy; (iii) Sasikumar, S/o.Lingusamy; (iv)Sesuraja, S/o.Chinnan, were present at that time and on seeing the police party, Sasikumar and Sesuraja, who came in the two wheeler, by leaving the two wheeler, tried to escape from that place and hence, the other two



persons, Karthik and Saravanan were arrested and the contraband is seized.

(e) Even according to the prosecution, the petitioner was not present at the occurrence time along with other accused and admittedly, there was no recovery from the petitioner. As rightly contended by the learned counsel for the petitioner, except the confession statement of the co-accused, the prosecution has not produced any material or evidence to connect the petitioner with the crime in question.

....."

7. Taking into consideration the above facts and circumstances of the case, this Court is convinced that the petitioner has satisfied the conditions as required under Section 37 of NDPS Act for grant of bail. Further, on considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner on certain 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 (the learned Judge has to verify with the genuineness of the sureties) for a like sum to the satisfaction of the learned **Judge, Special Court for NDPS Act Cases, Madurai**, and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judge may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner shall report before the respondent Police daily 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 Judge/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 Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560]**;



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(h) if the accused thereafter abscond, a fresh FIF registered under Section 229A IPC.

sd/-

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15/02/2023

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

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TO

- 1 THE JUDGE, SPECIAL COURT FOR NDPS ACT CASES, MADURAI.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 3 THE INSPECTOR OF POLICE, NIBCID POLICE STATION, DINDIGUL,
DINDIGUL DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.KARTHIK, Advocate (SR-2344[I] dated 15/02/2023)

ORDER

IN

CRL OP(MD) No.1883 of 2023

Date :15/02/2023

RS/SSS/SAR.(15.02.2023) 4P-6C