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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 08.03.2023

PRESENT

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

CRL OP(MD) .Nos.2709 and 4083 of 2023

Jenitar ...Petitioner/Accused No.4 in
Crl.O.P (MD) No.2709 of 2023

Babu @ Babushagulin ...Petitioner/Accused No.3 in
Crl.O.P (MD) No.4083 of 2023

Vs

The State rep.by,
Inspector of Police,
Thazhamuthunagar Police Station,
Thoothukudi District.
Crime No.129 of 2022. ... Respondent/Complainant
in both cases

For Petitioners : Mr.C.Susi Kumar
for M/s.Subash Babu M, Advocate.

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

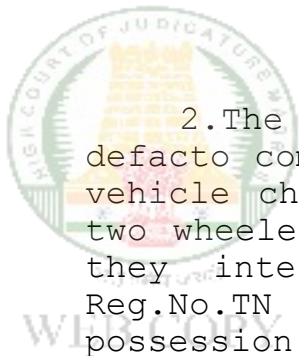
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

To enlarge the Petitioner on bail in CC.No.378 of 2022 on the
file of the Principal Special Court for EC and NDPS Act
Cases, Madurai District.

ORDER : The Court made the following order :-

The petitioners/A3 and A4, who were arrested and remanded to
judicial custody on 01.04.2022 for the offence punishable under
Section 8(c) r/w.20(b)(ii)(c) of NDPS Act in Crime No.129 of 2022
on the file of the respondent police, seeks bail.



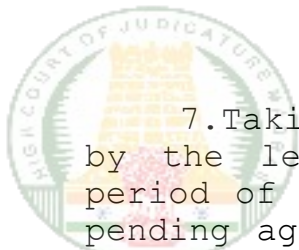
2.The case of the prosecution is that on secret information the defacto complainant along with his team of police officials were on vehicle check up on 31.03.2022 at about 9.00 a.m., they stopped a two wheeler bearing Reg.No.TN 75 M 9781. At that time on suspicion they intercepted and searched another four wheeler bearing Reg.No.TN 055 AS 0006. On search four persons were found in possession of contraband ranging from 5 to 7 kgs. Based on the same, the present case came to be registered.

3.The learned counsel appearing for the petitioner would submit that the petitioners are innocent persons and they have been falsely implicated in this case. He would further submit that the petitioners were found in possession of only 5kgs of ganja. It is the case of the prosecution that while the respondent was conducting search another car came there and in that car nearly 5 to 7 kgs of ganja was found and there is no nexus between the petitioner and the other accused. Further the contraband recovered from the petitioner is only 5 kgs which is not a commercial quantity. Further he would submit that main accused/Thulasi(A1) has been arrested and released on bail by this Court in Crl.O.P(MD) No.10251 of 2022 dated 17.08.2022. He would also submit that the petitioners are in jail from 01.04.2022 and they are also ready to abide by any stringent condition imposed by this Court, hence, they seeks for bail.

4.The learned Additional Public Prosecutor appearing for the respondent would submit that petitioner along with other accused were found in possession of 24 kgs of ganja, which is a commercial quantity. Further A2 was first arrested and from him 5kgs of ganja was recovered and the other accused came in a car were later arrested with 19kgs of ganja which was also recovered. He would submit that main accused/Thulasi(A1) has been arrested and released on bail by this Court in Crl.O.P(MD) No.10251 of 2022 dated 17.08.2022. He would also submit that investigation has been completed and final report has been filed before the Principal Special Court for EC and NDPS Act Cases, Madurai and the same has been taken cognizance in C.C.No.378 of 2022. He would further submit that the accused have not engaged counsel, thereby there is a delay in the progress of trial, hence he opposed to grant bail to the petitioners.

5.Heard. Perused the materials available on record including the First Information Report.

6. In this case the A2 was arrested with 5kg of ganja and subsequently from another four wheeler 19kgs of ganja was recovered. It is seen from the records that A1 who is main accused from whom 7kgs of ganja was recovered was arrested and released on bail by this Court and in the said order this Court also found that all the persons were engaged in separate purchase and selling of ganja.



7. Taking into consideration of the facts and submissions by the learned counsels and also taking into consideration the period of incarceration and also the fact that no previous case is pending against the petitioners, this Court is of the opinion that rigor of section 37 of the NDPS Act will not be applicable to this petitioner, hence this Court is inclined to grant bail to the petitioners subject to the following conditions:

8. 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 sureties each for a like sum to the satisfaction of the Principal Special Court for EC and 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 Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioners shall report before the respondent police daily at 10.30 a.m., until further orders;

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

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

(f) the petitioners 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 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];

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

sd/-

08/03/2023

/ TRUE COPY /

09/03/2023

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

VSD



TO

1. THE JUDGE,
PRINCIPAL SPECIAL COURT FOR EC AND NDPS ACT CASES, MADURAI.

2. THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.

3 THE INSPECTOR OF POLICE,
THAZHAMUTHUNAGAR POLICE STATION,
THOOTHUKUDI DISTRICT.

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

COPY TO

THE OFFICER IN CHARGE,
RAY OF LIGHT FOUNDATION,
NO.10, NAGESWARA ROAD, NUNGAMBAKKAM, CHENNAI,
TAMIL NADU 600 034.

+1 CC TO M/S.C.SUSIKUMAR, ADVOCATE SR NO.3744

ORDER
IN
CRL OP (MD) No.2709 of 2023
Date :08/03/2023

RK/SBN/SAR-(08/03/2023) 4P/7C