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CRL OP(MD).



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Reserved on : 20.03.2023

Delivered on : 27.03.2023

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.3383 of 2023

Balaji @ Madras Balaji

...Petitioner/Accused No.16

vs.

State represented by
The Inspector of Police,
Koodal Pudur Police Station,
Madurai District.
(Crime No.1388 of 2020)

... Respondent/Complainant

For Petitioner : Mr.J.Vijayaraja, Advocate

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

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

PRAYER :-

For Bail in C.C.No.120 of 2021 on the file of the learned 2nd Additional District Judge, Special Court for NDPS Cases, Madurai.

ORDER : The Court made the following order :-

The petitioner/A.16, who is facing a case for the offences punishable under Sections 8(c), 20(b)(ii)(c) and 29(1) of Narcotic Drugs and Psychotropic Substances Act, in C.C.No.120 of 2021 on the file of the learned 2nd Additional District Judge, Special Court for NDPS Cases, Madurai, in Crime No.1388 of 2020, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 05.09.2020 at about 03.00 p.m., when the respondent police was on regular surveillance duty in the area of the first accused, near the house of the first accused, the first accused and 15 members were found with white color gunny bags and on seeing the police, they fled away from the spot and that the police chased and arrested the accused 1 to 3 and seized one contraband of 22 kgs of Ganja from them.



3. The petitioner's case is that the petitioner is innocent and he has not committed any offence as alleged by the prosecution, that there was no recovery from the petitioner, that the petitioner was falsely implicated only on the basis of the alleged confession statement taken from the co-accused and that the petitioner is not having any previous cases for similar offence.

4. The learned Additional Public Prosecutor appearing for the respondent would submit that there are totally 16 accused and that the contraband seized is of commercial quantity. He would further submit that when the petitioner was in judicial custody in other case, he was formally arrested on 17.12.2020 and on production before the concerned Court, he was remanded to judicial custody so far as the present case is concerned, that the petitioner is having 12 previous cases, in which, one case is under the NDPS Act and that the case in Crime No.2685 of 2020 came to be registered on 01.12.2020 against the petitioner and another for allegedly possessing 3 kgs of Ganjga and the petitioner was arrested and the contraband was recovered from him.

5. The learned Additional Public Prosecutor would further submit that the case as against the fourth accused was ordered to be split up and the case now stands posted for examination of L.W.1 to L.W.3 on 20.03.2023.

6. No doubt, the earlier application for bail filed by the petitioner in Crl.O.P.(MD)No.842 of 2022 was ordered to be dismissed by this Court vide order dated 04.03.2022.

7. The main contentions of the petitioner is that some of the co-accused were already granted bail by this Court, that there are several cantena of judgments to show that Section 37 of the NDPS Act embargo could not apply when the reasonable grounds have been putforth they can released on bail and that the petitioner is in judicial custody for the past 180 days.

8. In the case on hand, as already pointed out, the petitioner was implicated only on the basis of the confession alleged to have taken from the co-accused and there was no recovery from the petitioner and that the prosecution has not produced any evidence or material to show that the petitioner was very much available at the scene of occurrence. Hence, this Court can very well record a finding that there are reasonable grounds for believing that the petitioner is not guilty of such offence, but at the same time, taking note of the fact that the petitioner is having 12 pending cases, which includes one case under the NDPS Act and that the contraband in that case was recovered from the petitioner, this Court cannot record a finding that the petitioner is not likely to commit any such offence, after coming out on bail.



9. This Court, in batch of cases in **Crl.O.P. (MD)No.509: 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, has observed as follows:-

"18. Section 37 of the NDPS Act creates bar for grant of bail whenever the recovery is of commercial in nature and also when the offence is under Section 27-A of the NDPS Act.

Perusal of the provisions of Section 37 of NDPS Act would show that although there is a bar created for grant of bail but a departure can be made in case where the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail, then the Court can always consider the grant of bail in that regard. The Hon'ble Supreme Court in the case of State of **Kerala and another vs. Rajesh and another**, reported in **2020 SCC Online SC 81**, has observed;

"20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with nonobstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates."

10. It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative.

11. As already pointed out, since the petitioner has miserably failed to satisfy the second condition contemplated under Section 37 of the NDPS Act, this Court has no hesitation to hold that the petitioner is not entitled to get the relief claim.

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

sd/-

27/03/2023

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/04/2023

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



TO

1. 2nd Additional District Judge,
Special Court for NDPS Cases, Madurai.

2. The Superintendent,
Central Prison, Salem.

3. The Inspector of Police,
Koodal Pudur Police Station,
Madurai District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER IN
CRL OP (MD) No.3383 of 2023
DATE :27.03.2023

NA/VR/SAR-2/03.04.2023/4P/5C