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CRL OP(MD)



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

RESERVED ON : 13/03/2023

PRONOUNCED ON : 15/03/2023

PRESENT

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

CRL OP(MD)No.4304 of 2023

L.Sasikumar

... Petitioner/Accused No.1

Vs

1.The Deputy Superintendent of Police,
NIB CID,
Dindigul,
Dindigul District.

2.The Inspector of Police,
Chatrapatti Police Station,
Dindigul District.

... Respondent/Complainant

For Petitioner : M/s.Paul Kanagaraj R.C.,
Advocate.

For Respondents : 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 C.C No.580 of 21 in Crime No. 36 of 2021 (on the file of the first respondent) pending investigation before the second respondent.

ORDER : The Court made the following order :-

The petitioner/Accused No.1 who was arrested and remanded to judicial custody on 02.02.2023 for the offences under Sections 8(c), 20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.36 of 2021 on the file of the first respondent Police, seeks bail.



2.The case of the prosecution is that on 10.05 at about 08.30 hours when the second respondent had received information from his secret informant that the petitioner is going to exchange ganja near Virupachi Kanavai Thootham and mounted surveillance, the second respondent noticed a two-wheeler bearing Registration No.TN-37-U-4974 driven by one person near Ottanchattiram Main Road, Virupachi Kanavai Thootham, followed by Tavera car bearing Registration No.TN-36-8263. The said car stopped at the spot and at that time, 2-two wheeler bearing Registration Nos.TN-58-U-2084 and MH02AN6699 driven by two persons went near the car. At that time, one person from the car and one person came in front of the car in a two-wheeler got down and took out two white colour plastic gunny bags from the car and kept them in the middle seat of the car and handed over the same to the person who came to the spot in two motorbikes. When the second respondent with his team attempted to secure the persons, who got down from the car and the person who came in two-wheeler in front of the car ran away from the scene. The other persons were secured and they are Karthick and Saravanan. On enquiry, it came to light that the persons, who ran away from the scene are Sasikumar and Jesuraja. The second respondent after completing the necessary formalities under NDPS Act seized 25 kgs of ganja from the said Karthick in one plastic gunny bag and seized another 25 kg bag of ganja from one Saravanan in the second gunny bag. The second respondent after taking samples drew Mahazar and recorded the confessions of both the accused and arrested them. The vehicles were also seized and later registered a case in Crime No.157 of 2021 under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act and took up the investigation.

3.The learned counsel appearing for the petitioner would submit that initially, the second respondent registered the F.I.R in Crime No.157 of 2021 for the offence under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act. After a period of six months, the investigation was transferred to the file of the first respondent and the first respondent reassigned the crime number as Crime No.36 of 2021 for the offences under Sections 8(c), 20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 and started investigation. After completion of the investigation, the first respondent filed a final report as against 7 accused persons, in which the petitioner is arraigned as the first accused.

4. The learned counsel appearing for the petitioner further submitted that earlier, the petitioner/A.2 along with one Jesuraja/A.4 filed an anticipatory bail petition in Crl.O.P(MD) No.7300 of 2021 on the file of the second respondent police in Crime No.157 of 2021 and this Court, by order, dated 23.06.2021, dismissed the petition. Thereafter, the petitioner along with one Jesuraja filed another anticipatory bail petition in Crl.O.P(MD)No.12674 of 2021. Pending the petition, this Court, by order, dated 24.09.2021, granted interim anticipatory bail to the petitioners therein and directed them to appear before the second respondent police and



cooperate for the enquiry. Thereafter, upon the report filed by the second respondent, this Court, by order, dated 27.10.2021, dismissed the said Crl.O.P(MD)No.12674 of 2021, on the ground that the mobile tower locations were found against the petitioner. Thereafter, the petitioner filed a third anticipatory bail petition in Crl.O.P(MD) No.3234 of 2022 and the same was dismissed as withdrawn on 17.02.2022. Subsequently, the petitioner along with one Jesuraja filed a fourth anticipatory bail petition in Crl.O.P(MD)No.11409 of 2022 and this Court, by order, dated 06.07.2022, dismissed the petition. The four anticipatory bail petitions are related to Crime No.157 of 2021. Thereafter, the petitioner along with one Jesuraja filed an anticipatory bail petition in Crl.O.P(MD)No.18039 of 2022 in Crime No.36 of 2021 and this Court, by order, dated 25.11.2022, dismissed the petition. Thereafter, the petitioner was arrested and remanded to judicial custody on 02.02.2023.

5.The learned counsel appearing for the petitioner further submitted that according to the first respondent, the tower location of the petitioner was on the spot on 09.05.2021 and on the date of occurrence, namely on 10.05.2021, the petitioner's mobile phone was switched off. Therefore, the tower location of the petitioner was presented on the spot on 09.05.2021 was not at all possible, since two other accused persons were arrested only on 10.05.2021. Even if the mobile phone is switched off, the call history would reveal the place where the mobile phone was used lastly, and it will indicate the location. The petitioner is a transport driver. Since two of his lorries were stolen, the petitioner lodged a complaint before Oddanchatram Police Station on 31.07.2020 itself. On receipt of the complaint, respondent police issued CSR No.230 of 2020 and subsequently, it was registered in Crime No.2103 of 2020. However, no action has been taken on the F.I.R and as such, the petitioner was constrained to approach the higher officials of police personnel. In fact, the petitioner also filed a Writ Petition before this Court in W.P.(MD)No.14086 of 2020 for the change of investigation in Crime No.2103 of 2020. Therefore, the second respondent falsely implicated the petitioner as an accused. In fact, the witnesses in this case, namely Ponram, Natraj and Nagaraj were cited as accused in the private complaint. After the dismissal of the anticipatory bail petition in respect of Crime No.36 of 2021 in Crl.O.P(MD)No.18039 of 2022, dated 25.11.2022, the petitioner was arrested and remanded to judicial custody.

6.The learned counsel appearing for the petitioner further submitted that in so far as the previous cases of the petitioner for the offence under Section 307 of I.P.C and another under Section 302 & 307 of I.P.C are concerned, the petitioner was convicted for the offence under Section 307 of I.P.C., however, he was acquitted for the offence under Section 302 of I.P.C. In respect of other cases are concerned, the petitioner never faced any trial.



7. On perusal of the counter-affidavit filed by the respondent, it was revealed that there are totally 7 accused. The total contraband involved in this case is 50 Kgs. Initially, the second respondent registered the case as Crime No.157 of 2021 and thereafter, it was transferred to the file of the first respondent, and it was renumbered as Crime No.36 of 2021, in which, the petitioner is arraigned as Accused No.1. The second respondent arrested two accused persons and recovered the entire contraband from them. Now, after the completion of the investigation, the first respondent filed a final report and the same has been taken cognizance in C.C.No.580 of 2021. The petitioner is having 7 previous cases including one of the offence under Section 302 of I.P.C and was convicted for the offence under Section 307 of I.P.C.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. On perusal of the records revealed that the petitioner was on the spot on 09.05.2021. The occurrence took place on 10.05.2021 and on the said date, the petitioner switched off his mobile phone. That apart, the petitioner transferred a sum of Rs.1,00,000/- to the second accused on 06.05.2021, namely, four days before the date of occurrence. Therefore, there is material to connect the petitioner with the other accused persons. Though the third accused was granted bail by this Court in CrI.O.P(MD)No.4375 of 2022 on the ground that except the confession, no other material as to whether the petitioner therein was present in the scene of occurrence by identifying the mobile location and any other call details. Further, the third accused was languishing in jail for more than nine months. On the same ground, Accused No.6 was also granted bail by this Court in CrI.O.P(MD)No.13334 of 2021, by order, dated 23.12.2021.

10. In so far as the petitioner is concerned, the first respondent found the tower location of his mobile phone in the scene of crime, and he had transferred a sum of Rs.1,00,000/- to the account of the second accused four days prior to the occurrence. Therefore, there are materials to connect the petitioner along with other accused persons.

11. Further, on perusal of the confession statement of Accused No.2 discloses the fact that Accused Nos.1 and 2 are close associates and doing drug business. Therefore, on perusal of the material documents, namely phone call details, bank transaction, this Court satisfied that there is presumption as contemplated under Sections 35 and 54 of NDPS Act. That apart, in view of the bad antecedents of the petitioner and there is a bar under Section 37 of NDPS Act and the petitioner was secured only on 02.02.2023, this Court is not inclined to grant bail to the petitioner.



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12. Accordingly, this Criminal Original Petition is dismissed.

sd/-
15/03/2023

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

PS

TO

1. The Deputy Superintendent of Police,
NIB CID,
Dindigul,
Dindigul District.

2. The Officer In-Charge,
Sub jail, Dindigul.

3. The Inspector of Police,
Chatrapatti Police Station,
Dindigul District.

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

+1 CC to M/s. PAUL KANAGARAJ R.C, Advocate (SR-4211[I] dated
15/03/2023)

ORDER

IN

CRL OP(MD) No.4304 of 2023

Date : 15/03/2023

NA/MMS/SAR-4/20.03.2023/5P/6C