



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

Date : 14/02/2023

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD)No.6147 of 2022

WEB COPY

P.Naga Arjun

... Petitioner/Accused No.3

Vs

State represented by
The Inspector of Police,
NIB CID, Thoothukudi,
Thoothukudi District.
[Cr.No.03 of 2022]

... Respondent/Complainant

For Petitioner : Mr.P.Banu Prasath

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

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

PRAYER :-

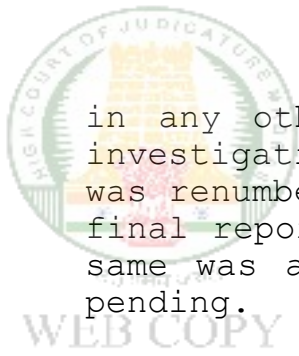
For Bail in Crime No.03 of 2022 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner / third accused, who was arrested on 29.07.2021 for the alleged offence under Section 8(c) r/w Section 20(b)(ii)(c) and Section 25 of the NDPS Act, in connection with Cr.No.3 of 2022 on the file of the Inspector of Police, NIB CID, Thoothukudi District, has filed this application seeking bail.

2.The case of the prosecution is that the Inspector of Police, Kuzhithurai, Thoothukudi District based on secret information conducted surveillance on 28.07.2021 at about 22.00hrs at Vaipar to Keela Vaipar road. At that time the police intercepted one Maruthi Suzuki Baleno car bearing Registration Number. TN 09 CB 8929 and on seeing the police officials, two persons from that car fled away into the forest, leaving the car as it is. The police officials found four gunny bags in the car weighing 76 KGs of ganja and recovered the same. Subsequently registered a case in Crime No.196 of 2021 for the offence under Section 8(c) r/w section 20(b)(ii)(c), and Section 25 of the NDPS Act and the police arrested the petitioner and four others and remanded them to judicial custody.

3.The learned counsel for the petitioner submits that this petitioner is an innocent person, whose service was availed as an acting Driver during the relevant point of time. At no point of time he was aware of the contraband found in the car. He was not involved



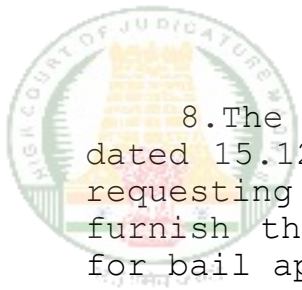
in any other case. The learned Counsel further submits the investigation in Crime No.196 of 2021 was transferred to NIB CID and was renumbered as Crime No.3 of 2022. The NIB CID has also filed the final report before the Special Court for NDPS Act, Madurai and the same was also taken on file in CC No.56 of 2022 and the trial is pending.

4. According to the learned Counsel for the petitioner, there is no incriminating material as against the petitioner in the final report, except the confessional statement by the other accused that the petitioner was the Driver of the car bearing Registration Number TN 09 CB 8929.

5. The learned Additional Public Prosecutor appearing for the State submits that the petitioner / accused already moved four bail applications before this Court and the same were dismissed. Thereafter the petitioner moved bail application before the trial Court and got dismissal of the application. Again the petitioner approached this Court for the fifth time but filed the bail fifth bail application, as if it was the first bail application, despite the earlier four bail applications. This Court after noticing the earlier dismissals, directed the petitioner's counsel to file a fresh application by mentioning all the dismissals of the earlier bail applications. As per the direction of this Court the present sixth bail application is filed, mentioning all the earlier dismissals.

6. The learned Additional Public Prosecutor further submits that this petitioner is a Driver of the vehicle bearing Registration Number. TN 09 CB 8929 and the contraband to an extent of 76 KGs were recovered from the car. Considering the gravity of the offence, the case was also transferred to NIB CID and a new number has been assigned as Crime No.3 of 2022. NIB CID conducted the investigation and filed the final report as against this petitioner, since the earlier applications were dismissed as there is no change in circumstance, this bail application is liable to be dismissed.

7. The learned Additional Public prosecutor also submits that the Department has already issued a standard format / questionnaire for providing instructions for bail and anticipatory bail in NDPS cases in ROC No.133/HM/2022, dated 01.08.2022 to the Law Officers attached to the office of the Public Prosecutor, High Court, both in the Principal Seat at Madras and its Bench at Madurai. However, in the present case the respondent police submitted their written instructions before the trial Court mentioning the dismissal of two bail applications by this Court. The trial Court also observed the same in its dismissal order in Cr.M.P.No.303 of 2022 dated 05.03.2022.



8.The learned Public Prosecutor has also sent a comm on dated 15.12.2022 to the Superintendent of Police, NIB CID, Chennai, requesting him to issue suitable directions to his subordinates to furnish their written instructions in a uniformed standard format for bail applications.

9.This court considered the rival submissions made and pursed the materials placed on record.

10.This petitioner was arrested on 31.07.2021 by the Inspector of police, Kuzhithurai Police Station in crime No.196 of 2021 and the case is now transferred to NIB CID and renumbered as Crime No.3 of 2022. The NIB CID has also filed its final report before the Special Court to deal with the Economic Offence and NDPS Act Cases Madurai and it was taken on file in CC No.56 of 2022. This petitioner is implicated through the confession statement of the co-accused that he was the Driver of the vehicle bearing Registration No.TN 09 CB 8929 at the time of the occurrence. Neither the Police Officials nor the NIB CID had collected any other materials connecting this petitioner with the other accused that this petitioner was having the knowledge of the contraband in the vehicle. The petitioner pleads that he was engaged as an acting Driver on that particular day and he was not aware of the contraband found in that car and he is not having any other previous criminal cases against him.

11.The Hon'ble Supreme Court in **Tofan Singh Vs.State of Tamil Nadu** has held as follows:-

"A confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused Petition for Special Leave to Appeal (Criminal) No. 1569 OF 2021 under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Cr1.) No@ Diary No. 22702/2020, SLP (Cr1.) No. 1454/2021, SLP (Cr1.) No. 1465/2021, SLP (Cr1.) No. 1773-74/2021 and SLP (Cr1.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner - NCB seeking cancellation of bail



granted to the respective respondents, are dismissed as meritless."

12.The petitioner was arrested on 31.07.2021. He was implicated only through the confession statement of the other accused that the petitioner was the Driver of the offending vehicle during the time of the occurrence.

13.Applying the ratio laid down by the Hon'ble Supreme Court in Tufan's case cited supra and considering that accused Nos.1 and 2 in this case were already released on bail by this court and also considering the period of investigation, filing of final report and the incriminating material available against this petitioner in the final report, this court is inclined to grant bail to the petitioner.

14.The first bail application filed by this petitioner in Crl.OP(MD) No.15543 of 2021 was dismissed on 25.10.2021 that investigation was at initial stage. The second bail application in Crl.OP(MD) No.18475 of 2021 was dismissed on 02.12.2021 on the representation of the respondents that the case has been transferred to NIB CID. The third bail application in Crl.OP(MD)No.19200 of 2021 was dismissed as withdrawn by order dated 14.12.2021. The fourth bail application in Crl.OP.(MD) No.974 of 2022 was dismissed on 04.02.2022 that final report was filed before the trial Court and the petitioner was directed to approach the trial court for bail. Accordingly the petitioner has also approached the trial Court for bail in Crl.MP.No.303 of 2022, which was dismissed on 05.03.2022. Therefore again another bail application for the fifth time was filed before this court in Crl.OP(MD)No.530 of 2022, wherein since the filing of the earlier applications and their dismissals were not mentioned, it was withdrawn and thereafter the present sixth bail application has been filed. In fact this petitioner has suppressed the earlier applications filed in Crl.OP(MD)No.15543 of 2021 and Crl.OP(MD) No.18475 of 2021 in his subsequent bail applications. The petitioner filed a memo that all the earlier bail applications were filed without the knowledge of the petitioner by the co-accused and it was not willfully made. The petitioner alone cannot be blamed for the mistakes committed in this case, equally the respondent has also failed to inform the earlier orders of this Court in the subsequent bail applications. Now the learned Additional Public Prosecutor claims that all the Law Officers were already directed to get instructions in standard format in ROC No.133/HM/2022, dated 01.08.2022 and also sent a communication dated 15.12.2022 to the Superintendent of Police, NIB CID, Chennai in this regard, this court is not passing any further order in respect of the same. This Court expects that this type of mistake does not recur in future.

15.In the light of the above discussion, this petition is allowed and the petitioner is directed to be released on bail on his



executing a bond for a sum of Rs.10,000/- (Rupees ten thousand) with two sureties, each for a like sum to the satisfaction of the learned Additional and Sessions Judge / Presiding Officer, Special Court for EC and NDPS Act, Madurai and on further conditions that:

[a]the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b]the petitioner shall report before the respondent Police as and when required.

[c]the petitioner shall not abscond either during investigation or trial.

[d]the petitioner shall not tamper with the evidence or witness either during investigation or trial.

[e]On breach of any of the aforesaid conditions, the learned Magistrate/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 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]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

14/02/2023

/ TRUE COPY /

14/02/2023

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

DSK

To

1 THE ADDITIONAL DISTRICT & SESSIONS JUDGE /
PRESIDING OFFICER, SPECIAL COURT FOR E.C AND NDPS ACT, MADURAI.
2 THE INSPECTOR OF POLICE
NIB CID, THOOTHUKUDI, THOOTHUKUDI DISTRICT.
3 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.
4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC TO M/S.P.BANU PRASATH, Advocate SR-2304[I]

ORDER IN

CRL OP(MD) No.6147 of 2022

Date :14/02/2023

RS/SSS/SAR.(14.02.2023) 5P-6C

<https://www.mhc.tn.gov.in/judis>