



WEB COPY

CRL OP(MD).



23

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 28/03/2023

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.5310 of 2023

Dhilipkumar @ Dhilipan

... Petitioner/Accused No.2

Vs

State Rep by
The Inspector of Police,
S.S.Colony Police Station,
Madurai
(Crime No.2361 of 2020)

... Respondent/Complainant

For Petitioner : Mr.P.Andiraj, Advocate
for Mr.A.Subash, Advocate
For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No.2361 of 2020 on the file of the Respondent Police.

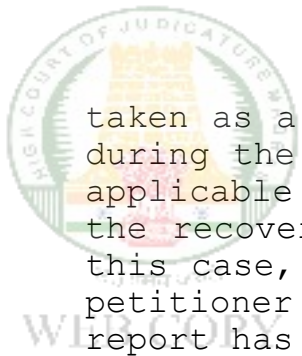
ORDER : The Court made the following order :-

The petitioner, who was arrested on 25.10.2020, in connection with the case in Crime No.2361 of 2020 for the offence punishable under Sections 8(C) r/w. 20(b)(ii)(C), 25, 29(1) of NDPS Act, seeks bail.

2. This is the second bail petition. The earlier bail petition in Crl.O.P.(MD)No.12484 of 2021 was dismissed by this Court by order dated 21.09.2021 considering the antecedents of the petitioner.

3. The learned counsel appearing for the petitioner submits that there is violation of mandatory conditions as stipulated under Section 50 of NDPS Act, which would affect the root of the case and therefore, the petitioner is entitled for bail.

4. The learned Additional Public Prosecutor appearing for the respondent submits that even if there is any violation of mandatory conditions, as stipulated under Section 50 of NDPS Act, it cannot be



taken as a ground at the time of bail and it can be considered only during the trial. He further submits that Section 50 of NDPS Act is applicable only for a search on the body of the accused and not for the recovery of any contraband from the bag or from a vehicle. In this case, 42 Kgs of ganja was recovered from a vehicle, where, the petitioner was also present at the time of occurrence and a final report has already been filed in the year 2021, but, the trial could not be proceeded further in view of abscondance of one of the accused. He further submits that a special Team has also been constituted to secure the absconding accused and they will secure the absconding accused within 15 days from today.

5. This Court considered the rival submissions made.

6. As rightly pointed out by the learned Additional Public Prosecutor, as per the dictum laid down by the Hon'ble Apex Court, even if there is violation of Section 50 of NDPS Act, it can be considered only during the trial and not at the stage of granting bail. Therefore, this Criminal Original Petition is dismissed.

7. However, considering the fact that the petitioner is languishing in jail for the past 2 ½ years and the trial could not be proceeded further for want of absconding accused, **the respondent Police is directed to secure the absconding accused as expeditiously as possible, preferably, within a period of two weeks from today.**

8. If the absconding accused is not secured within a reasonable time, the respondent Police shall file a necessary application before the concerned trial Court requesting to split up the case as against the remaining accused and proceed with the trial. If such application is filed by the prosecution, the trial Court, namely, the learned Judge, Principal Special Court for NDPS Act Cases, Madurai, shall split up the case with the remaining accused and conclude the trial within a period of five months from thereon.

sd/-

28/03/2023

/ TRUE COPY /

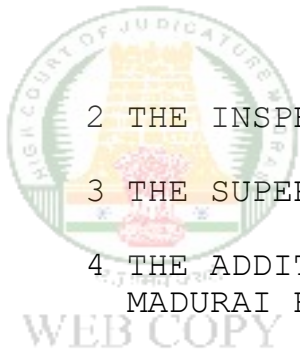
/03/2023

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

ogy

TO

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



2 THE INSPECTOR OF POLICE, S.S COLONY POLICE STATION, MADURAI

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

COPY TO

THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL OP(MD) No.5310 of 2023

Date :28/03/2023

RS/BUC/SAR-2 (31.03.2023) 3P 6C