



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

DATED : 29.03.2023

PRESENT

THE HONOURABLE MRS.JUSTICE R.THARANI

WEB COPY

Crl.O.P.(MD)No.5369 of 2023

Mahesh Shanmugam @ Mahesh @ Kalvai Mahesh

... Petitioner/Accused No.2

Vs.

The State Rep. by
The Inspector of Police,
Muneerpallam Police Station,
Tirunelveli District.
Crime.No.526 of 2020.

... Respondent/Complainant

For Petitioner : Mr.R.Tamilvanan, Advocate
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

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

PRAYER :- For Bail in C.C.No.147 of 2021 on the file of the District and Sessions Court for NDPS Act cases, Madurai.

ORDER

The petitioner/Accused, who was arrested on 29.11.2021 for the alleged offence under Sections 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act, in CC.No.147 of 2021 in Crime No.526 of 2020, on the file of the learned District and Sessions Judge, NDPS Act Cases, Madurai, seeks bail.

2. The case of the prosecution is that on secret information, on 09.09.2020 the respondent Police conducted vehicle check-up and seized two wheeler bearing registration No. TN 72 BF 2363 and a car bearing Registration No.TN-05-AP-7270 found 21 kgs of contraband. Based on the confession, the respondent Police has registered a case in Crime No.526 of 2020, against four accused persons. The petitioner is arrayed as A2 in this case.

3.1. On the side of the petitioner, it is stated that the petitioner is noway connected with the case. The entire contraband was seized from the other two accused persons. The petitioner was arrested on 29.11.2021 and he is in custody for the past 1 ½ year. The petitioner also filed first bail petition before the Special Court for NDPS Cases, Madurai and the same was dismissed on 29.03.2022.



3.2. The respondent arrested the petitioner on 07.07.2022, in another case in Crime No.434 of 2021, on the file of Palayamkottai Police Station and Goondas Act was initiated against the petitioner and the same was revoked by this Court in H.C.P.(MD) No.1714 of 2021, dated 08.06.2022. In this case, already charge sheet was filed in C.C.No.147 of 2021, hence, there is no necessity for custodial interrogation.

3.3. The petitioner is only A2 in the case. There was no recovery from the petitioner. Recovery was made only from A4 and A6. Except the petitioner all other accused were already released on bail and anticipatory bail. Except the confession statement of the co-accused, there is no material to connect the petitioner in the crime. There is no evidence to prove that the petitioner was in the place of occurrence.

3.4. A3 was released on anticipatory bail in Crl.O.P.(MD) No.1899 of 2022, dated 23.02.2022, A1 and A6 were released on bail in a common order, dated 29.03.2022, in Crl.O.P.(MD) Nos.17780 of 2021 and 1251 of 2022, A4 was released on bail on 17.10.2022, in Crl.O.P.(MD) No.17395 of 2022, A5 and A7 were released on bail in a common order, dated 13.04.2022, in Crl.O.P.(MD) Nos.5113 and 6278 of 2022.

4. In Crl.O.P.(MD) Nos.5113 and 6278 of 2022, a common order was passed by this Court, wherein, this Court has made the following observation:-

"7. As per the case of the prosecution, the contraband was taken in two vehicles, namely, a car and a motorcycle. A5 is a passenger in the car and A7 is a pillion rider in the motorcycle. The recoveries were made from A4 and A6. Even as per the prosecution, 2.1 kgs. of ganja was recovered from the motorcycle and 19 kgs of ganja was recovered from the car. Therefore, the same cannot be termed as a commercial quantity. Now, the investigation was completed and final report has also been filed. Considering the fact that A1 was released on bail and A3 was also granted anticipatory bail by this Court, this Court is inclined to grant anticipatory to the petitioners."

5.1. As per the observation of this Court the quantity involved is not commercial in nature. Since the quantity involved is not commercial in nature, Section 37 of NDPS Act is not made out. No material was available to show that there was some connection between 2 two wheeler and the car involved in the occurrence.



5.2. Release of the co-accused on bail and on ant. bail is the change of circumstances. In the previous cases, only Rs.1000/- fine was imposed to the petitioner, only to avoid to harassment of the police, the petitioner paid the fine. A5, who was released on bail, is having three previous cases. The petitioner has to undergo appendix operation. Though this Court has given direction to the lower Court to dispose of the case within a period of two months, the trial has not yet commenced. Hence, he prayed the petitioner to be released on bail.

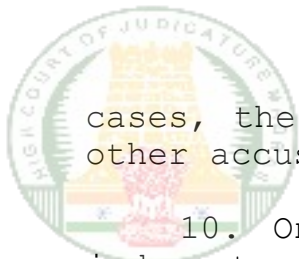
6. On the side of prosecution, it is stated that the petitioner is having five previous cases, out of which, two cases are similar in nature, a case in Crime No.720 of 2016 under Section 20(b)(ii)(A) of NDPS Act was ended in conviction. The petitioner also involved in another case under Section 302 IPC in Crime No.182 of 2019, on the file of Murappanadu Police Station. The petitioner is a habitual offender and he is not entitled for bail under Section 37 of NDPS Act. Once a person is convicted under the NDPS Act, he is not entitled for bail. It is further stated that NBW was issued against A1 and hence, the trial could not be commenced. The copy of the case status was filed on the side of the prosecution. The details of the previous case history was filed. The respondent Police is ready to complete the trial within three months and prayed the petition to be dismissed.

7. On the side of the prosecution, it is further stated that by an order of this Court, in Crl.O.P.(MD)No.17530 of 2022, dated 01.12.2022, the co-accused was released on bail on the ground that there was no recovery from the particular accused, wherein, it is stated as follows:-

"16. As rightly observed by this Court in Nelson's case above referred, since there was no recovery from the petitioner in any of two previous cases pending against him and he was implicated only on the basis of the confession statement alleged to have taken from the co-accused, the same cannot be considered as previous case under the NDPS Act, so as to prevent the petitioner from showing that the second condition gets satisfied and if the petitioner is having another case under the NDPS Act, in which, the recovery of contraband was made from the petitioner, then this Court cannot record a finding that there are reasonable grounds for believing that the petitioner is not guilty of such offence. "

8. Similar judgment of the Hon'ble Supreme Court in Criminal Appeal No.693 of 2021 (Paras Ram Vishnoi V. The Director, Central Bureau of Investigation), dated 27.07.2021, is cited.

9. On the side of the prosecution, it is stated that for releasing the accused on bail, there should not be any previous



cases, the petitioner is having three similar cases. Recorder, other accused is not a ground for granting bail.

10. On the side of the prosecution, to substantiate this, a judgment of the Hon'ble Supreme Court reported in **2004-7-SCC-528 (Kalyan Chandra Sarkar V. Rajesh Ranjan @ Pappu Yadav)** is cited, wherein, it is stated as follows:-

"While cancelling the said bail this Court specifically held that the fact that the present accused was in custody for more than one year (at that time) and the further fact that while rejecting an earlier application, the High Court had given liberty to renew the bail application in future, were not grounds envisaged under Section 437(1)(1) of the Code. This Court also in specific terms held that condition laid down under Section 437 (1)(1) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

11. On the side of prosecution, a judgment of the Supreme Court reported in 1999-9-SCC-429 (Union of India V. Ram Samujh and another), wherein, it is stated as follows:-

"It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable: it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants



clandestinely. Reason may be large stake and illegal process involved."

12. On the side of prosecution, another judgment of the Supreme Court reported in 2001-7-SCC-673 (State of M.P. V. Kajad), wherein, it is stated as follows:-

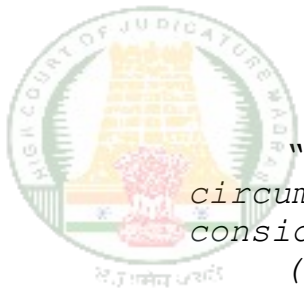
"The purpose for which the Act was enacted and the menace of drug trafficking which intends to curtail is evident from its scheme. A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant and exception under sub clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of subsection (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for."

13. On the side of prosecution, another judgment of the Supreme Court reported in **2021-4-SCC-781 (Sudha Singh V. State of U.P.)**, wherein, it is stated as follows:-

"8.This Court in Neeru Yadav vs. State of U.P.1 held that when a stand was taken that the accused was a history sheeter, it was imperative for the High Courts to scrutinise every aspect and not capriciously record that the accused was entitled to be released on bail on the ground of parity.

9. In Ash Mohammad vs. Shiv Raj Singh 2, this Court observed that when the citizens were scared to lead a peaceful life and heinous offences were obstructions in the establishment of a well-ordered society, the courts play an even more important role, and the burden is heavy. It emphasized on the need to have a proper analysis of the criminal antecedents of the accused."

14. On the side of prosecution, another judgment of the Supreme Court reported in **2010-14-SCC-496 (Prasanta Kumar Sarkar V. Ashis Chatterjee and another)**, is cited, wherein, it is stated as follows:-



"...It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

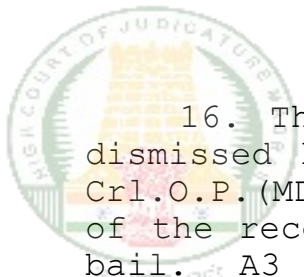
(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

15. On the side of prosecution, a judgment of the Supreme Court reported in **2009-8-SCC-539 (Karnail Singh V. State of Haryana)**, is cited, wherein, it is stated as follows:-

"35. While total non-compliance of requirements of subsections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or nonsending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001."



16. The previous petition in Crl.O.P.(MD)No.11341 of as dismissed by this Court on 08.09.2022 and the second petition in Crl.O.P.(MD)No.20968 of 2022 was dismissed on 29.11.2022. A perusal of the records reveals that A1, A5 and A7 were already released on bail. A3 was granted anticipatory bail. A6 from whom recovery was made also was released on bail. The co-accused-A5 was also having previous cases. The petitioner is in custody for the past 1 ½ years and considering the above change of circumstances, this Court is inclined to release the petitioner on bail, on the following conditions:-

17. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the Principal Special Court EC and NDPS Act Cases, Madurai, on condition that the petitioner shall execute a bond for a sum of **Rs.50,000/- (Rupees Fifty Thousand only)** with two sureties, each for a like sum to the satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Special Judge concerned and on further conditions that:

(a)the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Special Judge may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b)the petitioner shall report before the concerned Court on all working days at 10.30 a.m., until further orders;

(c)the petitioner shall not tamper with evidence or witness either during investigation or trial;

(d)the petitioner shall not abscond either during investigation or trial;

(e)on breach of any of the aforesaid conditions, the learned Special Judge 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 Special Judge himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]**; and;

(f)if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

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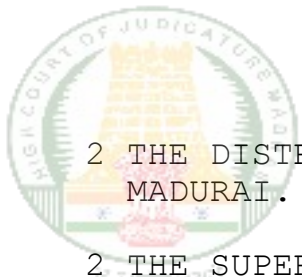
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

LS

TO

1 THE JUDGE,

PRINCIPAL SPECIAL COURT FOR EC & NDPS ACT CASES, MADURAI.



2 THE DISTRICT AND SESSIONS JUDGE FOR NDPS ACT CASES,
MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.

4 THE INSPECTOR OF POLICE,
MUNEERPALLAM POLICE STATION,
TIRUNELVELI DISTRICT.

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

+1. CC to M/S.TAMILVANAN R Advocate SR.No.5088

**ORDER
IN**

CRL OP (MD) No.5369 of 2023
Date :29/03/2023

SA/MMS/SAR. /31.03.2023/8P/7C