



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 12/04/2023

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PRESENT

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

CRL OP (MD) . Nos.5202 and 5281 of 2023

1.Nijanthan @ Nisanth

... Petitioner/A4
in Crl.O.P.(MD)No.5202 of 2023

2.Guna @ Gunasekaran

... Petitioner/A5
in Crl.O.P.(MD)No.5281 of 2023

Vs

The Inspector of Police,
Othakadai Police Station,
Madurai District.
(Crime No.189/2022).

... Respondent/Complainant
in both petitions

For Petitioner (in Crl.O.P.(MD)No.5202 of 2023)
: Mr.T.Sivananthan
Advocate.

For Petitioner (in Crl.O.P.(MD)No.5281 of 2023)
: Mr.P.Vimala
Advocate.

For Respondent (in both petitions)
: Mr.T.Senthilkumar,
Additional Public Prosecutor

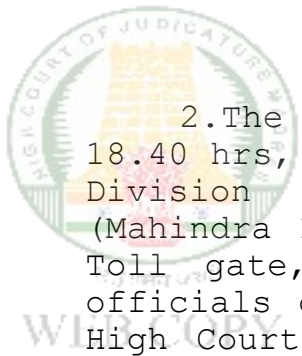
PETITIONS FOR BAIL Under Sec.439 of Cr.P.C.

COMMON PRAYER :-

For Bail in Crime no.189/2022 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioners/A4 and A5, who were arrested and remanded to judicial custody on 21.06.2022 (A5) and 11.07.2022 (A4) for the offences punishable under Sections 8(c) r/w 20(b)(ii)(c), 25 and 29 (i) of NDPS Act in Crime No.189 of 2022 on the file of the respondent police, seek bail.



2.The case of the prosecution is that on 21.06.2022, at 18.40 hrs, during vehicle checkup, the Joint Commissioner of Madurai Division intercepted the vehicle bearing Reg.No.TN-58-BE-9688 (Mahindra Dosth Lorry) at Madurai-Trichy bypass road near Vandiyur Toll gate, but the driver did not stop the lorry. Hence, the officials chased the lorry and stopped the lorry near back side of High Court building. Further, on search, it was found that nearly 1000 kgs of Ganja worth about Rs.1,50,000/- was found loaded in the said lorry. Thereafter, the officials handed over the petitioner/A4 along with contraband and vehicle to the respondent police. The respondent police registered a case and later, during investigation, the respondent police came to know that A5 and A2 usually purchased Ganja from A3 of Andhra Pradesh and the contraband was transported from Andhra Pradesh to Madurai in a vehicle bearing Reg.No.TN-32AJ-4127 Ashok Leyland and thereafter, it was loaded in Mahindra Dosth vehicle, which was driven by A1 and A4. After completing the procedures as contemplated under the NDPS Act, the respondent police seized the contraband and vehicle from A1 and arrested him. During investigation, it came to light that all the accused have actively involved in drug trafficking. Further, call details and CDR report disclosed that the petitioner along with accused were in constant touch and involved in illegal transport of Ganja which is a commercial quantity. Hence, the case.

3.The first accused was arrested with contraband weighing 810.350 kgs of Ganja. Based on his confession, the respondent police implicated A2 to A4. Further, in pursuance of the very same confession, the respondent police collected so many materials and implicated A5 in this case. Since he was in Srilanka, the respondent police issued a Lookout Circular and when the fifth accused came to India, he was arrested and remanded to judicial custody. However, the respondent police has failed to produce any materials before the learned Judicial Magistrate, Melur and as such, his remand was rejected. Subsequently, the fifth accused has voluntarily surrendered himself before the Essential Commodities Court, Thanjavur in C.C.No.3 of 2021 pursuant to the pendency of NBW against him, he was remanded to judicial custody. After remand on PT warrant, the fifth accused was again produced on PT warrant and showing the arrest in Crime No.189 of 2022.

4.The learned counsel for the petitioner/A5 vehemently contended that there was absolutely no material to connect the petitioner in Crime No.189 of 2022. Even according to the case of the prosecution, the first accused was found in possession of contraband weighing 810.350 kgs of Ganja and he did not even whisper about the role played by the petitioner/A5 and he had stated about the role played by A2 to A4. Though the first accused stated the name of the second accused, even till today, the second accused was not able to be secured by the respondent. Mere confession statement is not enough to connect the petitioner/A5 and implicate him as an



produced by the prosecution. That apart, as per the confession statement recorded, the petitioner/A5 was already remanded to judicial custody. In support of her contention, the learned counsel relied upon the Judgment of this Court in **Kumar @ Ranjithkumar Vs. State rep. by the Inspector of Police** reported in **2019 (2) MWN (Cr.) 242**, in which, this Court held that the seizure was not effected from the petitioners and they have added as accused persons based on the confession of the co-accused. Even on the date of effecting arrest through P.T. Warrant, the petitioners were remand prisoners in some other case.

5.The learned counsel for the petitioner/A4 would submit that the petitioner is only a loadman. Even according to the case of the prosecution, he had hired the vehicle, which was allegedly used in the crime, owned by L.W.13 and maintained by L.W.14. The petitioner hired the vehicle from L.W.14 and handed over to A1 to transport the contraband. Therefore, the petitioner was not in possession of any contraband and no recovery was made from the petitioner. He was arrested and remanded to judicial custody on 11.07.2022.

6.In both the cases, the respondent police have filed separate counters.

7.The learned Additional Public Prosecutor would submit that the petitioner/A5's earlier bail application was dismissed by this Court on 22.02.2023 by a detailed order and there is absolutely no change in circumstances. He would further submit that though the first accused stated everything about the fifth accused in his confession statement, that was not properly recorded. However, all the materials were collected including, such as, phone call details, phone and other materials to connect the fifth accused. However, those records were not produced before the learned Magistrate and as such, the fifth accused's remand was rejected. However, again on production of confession statement and the materials, which were collected, the fifth accused was remanded in Crime No.189 of 2022 on P.T. Warrant. That apart, the fifth accused is a habitual offender and he had seven previous cases for similar offences and two cases under COTPA Act. Therefore, *modus operandi* is that bulk quantity of Ganja were purchased from Andhra Pradesh and transported from Srilanka. Therefore, the fifth accused is the master plan behind the entire crime and as such, he prayed for dismissal of the petition as against the fifth accused.

8.Insofar as the fourth accused is concerned, he along with A2 and A3, unloaded the contraband which was purchased by A5 and transported the contraband in the vehicle which was hired from LW.14. In fact, A2 and A4 travelled in front of A1's lorry and crossed in the tollgate. The lorry was caught hold by the respondent police and found A1 was in possession of contraband weighing 810.350 kgs of Ganja. On the confession of the first accused, A4 was



arrested and remanded to judicial custody.

9.It is seen that the petitioners are arrayed as A4 and A5. In order to connect the petitioners, there are materials produced by the respondent police before this Court. It revealed that after arrest of the first accused, the other accused persons are escaped. In fact, after remand of the fifth accused, he had sent a remand report to A3. They also seized the mobile phone belonging to A3. The tower locations and phone call details are also produced before this Court to connect the petitioners in this crime. That apart, A5 so far involved in seven previous cases related to NDPS Act and two previous cases related to COTPA Act. Further, this Court dismissed the fifth accused's bail application in Crl.O.P.(MD)No.493 of 2023, dated 20.02.2023 and as such, there is absolutely no change in circumstances to consider this bail application.

10.Insofar as the fourth accused is concerned, he is the person, who travelled in front of the lorry and there are materials to connect him along with other accused persons. Therefore, all the accused persons were conscious and constructive possession of contraband weighing 810.350 kgs of Ganja, which is a commercial quantity. Therefore, the petitioners have failed to satisfy the twin conditions as contemplated under Section 37 of the NDPS Act. Hence, this Court is not inclined to grant bail to the petitioners.

11.Accordingly, these petitions are dismissed.

sd/-

12/04/2023

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/05/2023

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

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TO

1. The Superintendent, Central Prison, Madurai.
2. The Officer In-Charge, District Prison, Pudukottai.
3. The Inspector of Police,
Othakadai Police Station,
Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN

CRL OP(MD) Nos.5202 and 5281 of 2023

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