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CRL OP(MD).



23

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

RESERVED ON : 03.04.2023

PRONOUNCED ON : 10.04.2023

PRESENT

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

CRL OP(MD) . No.5602 of 2023

Suhail Ahmed

... Petitioner/Accused No.5

Vs

State rep. through,
The Inspector of Police,
K.Pudur Police Station,
K.Pudur,
Madurai City,
Madurai.

... Respondent/Complainant

For Petitioner : M/s.Niranjana.S.Kumar,
Advocate.

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

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

PRAYER :-

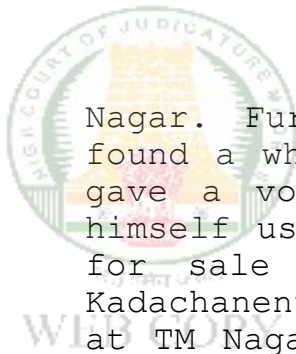
For Bail in Cr No.31/2022 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner / Accused No.5, who was arrested and remanded to judicial custody on 25.08.2022 for the offence punishable under Sections 8(c), 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 on the file of the respondent, seeks bail.

2. The case of the prosecution is that based on a secret information received by the Sub-Inspector of Police on 21.01.2022 at about 06.00 p.m., after making entries in the register at about 06.25 p.m., reached 120 feet road Surveyor Colony, near Hotel V-Grand at 06.30 p.m., Grey colour Nissan Car with Registration No.TN-19-S-8580 was proceeding and the respondent Police stopped the car and explained to him about the right in NDPS Act to be searched by a Magistrate or a Gazetted Officer. For which, the accused himself

<https://www.courtindia.org/>



Nagar. Further, on searching the vehicle, the respondent found a white bag with 8 kgs of Ganja. The said accused Raj Kumar gave a voluntary confession that one Jayakumar from K.Pudur and himself used to purchase Ganja wholesale and used to distribute it for sale to one Saravanan from Tindivanam, Vinoth Pandi from Kadachanthal and Akil from Kerala. Further, he had rented a house at TM Nagar, 4th Street from one Pounraj for this Ganja business. Thereafter, the respondent Police have gone to TM Nagar, 4th Street from where 19 kgs of Ganja was recovered from 2 bags each. Therefore, a case in Crime No.31 of 2022 was registered on the file of the respondent Police on 21.01.2022 for the offences punishable under Sections 8(C), 20(b)(ii)(C) and 25 of NDPS Act, 1985. Hence, the present petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner is a MBA Graduate, and he is hailing from the very respectable family. He is looking after several business, and he is already well off. Therefore, there are absolutely no circumstances for the petitioner to involve in this kind of offence. He had no previous antecedents and it is a first case.

4. The learned counsel appearing for the petitioner would further submit that there are totally five accused, in which the petitioner is arraigned as fifth accused. He has been implicated as an accused on the confession statement of the first accused. Even as per the confession statement of the first accused, he named one Akil from Kerala. There is absolutely no record to show that the petitioner is the said Akil from Kerala and he is the native of Kanyakumari District and he was never called as Akil. The petitioner is having Villa at Sirumalai, Dindigul District. The petitioner was introduced with the first accused by a common friend in order to stay at Villa. Except the said relationship, there is no other relationship between them. While being so, the petitioner had paid a sum of Rs.1,000/- to the first accused, in turn, it was duly repaid in favour of the petitioner herein. The first accused requested to send a sum of Rs.10,000/- on 08.11.2021 through Google Pay. It is prior to the registration of the alleged F.I.R. Therefore, except the confession statement of the first accused, there is no other material to connect the petitioner with the first accused.

5. The learned counsel appearing for the petitioner also relied upon the Judgment of the Honourable Supreme Court of India in **State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta and another** reported in **2022 LiveLaw (SC) 69**, wherein it is held that a confession statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the said settled law, the arrest made by the respondent on the basis of the confession/voluntary statement of the co-accused under Section 67 of the NDPS Act, is not permissible and as such, the petitioner is entitled for bail.



6.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that there are totally five accused, in which the petitioner is arraigned as fifth accused. The first accused was found in possession of 46 kgs of Ganja. Now, the investigation has been completed and filed a final report and the same has been taken cognizance in C.C.No.53 of 2003 on the file of the Principal District and Sessions Court for EC and NDPS Act Cases, Madurai. Initially, the F.I.R was registered in Crime No.31 of 2022 as against five accused persons on 21.01.2022. The petitioner was arrested and remanded to judicial custody on 25.08.2022.

7.The learned Additional Public Prosecutor appearing for the respondent would further submit that the father of the petitioner approached the Division Bench of this Court by filing a petition in H.C.P(MD)Sr.No.39272 of 2022, claiming that the petitioner was illegally detained. It was listed for maintainability and the Honourable Division Bench of this Court, by order, dated 18.11.2022, dismissed the same as not maintainable. Aggrieved by the same, the father of the petitioner also preferred an Special Leave to Appeal (Crl.) No.901 of 2023 and the same was also dismissed as withdrawn, by order, dated 25.01.2023. Subsequently, the petitioner filed an application for bail before this Court in Crl.O.P(MD) No.21903 of 2022 and the same was also dismissed only on 01.03.2023. Therefore, there is absolutely no change in circumstances to consider the petitioner for bail.

8.The learned Additional Public Prosecutor would further submit that there is a phone call details between the petitioner and the first accused. In fact, the tower location of the petitioner was very much available at the scene of crime. There was a money transaction between the petitioner and the first accused. These are all the materials to connect the petitioner with the first accused. Therefore, the petitioner was also in constructive possession of contraband of 46 kgs of Ganja, which is a commercial quantity, and prayed for dismissal of the bail petition.

9.Heard the learned counsel appearing on either side and perused the materials available on record including the First Information Report.

10.Totally there are five accused, in which the petitioner is arraigned as fifth accused. The learned counsel appearing for the petitioner mainly contended that according to the confession statement of the first accused one Akil from Kerala has been shown as fifth accused. The petitioner is in no way connected with the said name of Akil from Kerala and he is hailing from Kanyakumari and he has been falsely implicated as an accused and now remanded to judicial custody. It is wrong identification of the petitioner and



contraband was recovered from the first accused. It is seen from the records that the petitioner transferred a sum of Rs.10,000/- in favour of the first accused on 08.11.2021. Though the F.I.R was registered on 21.01.2022, for the said money transaction there is no proper explanation from the petitioner. Since the first accused is a habitual offender and involved in similar types of cases, it cannot be ruled out that the petitioner never sent any money to purchase any contraband from the first accused or finance to purchase contraband. Though the petitioner is named as Suhail Ahmed, the first accused confessed that one Akil from Kerala was involved in this case. The phone call details revealed that the petitioner had contacted the first accused so many times from his mobile phone. In fact, on the date of occurrence, namely on 21.01.2022, the tower location of the petitioner's phone was very much available within the jurisdiction of the scene of occurrence. Therefore, these circumstances are very clear that the petitioner used his name as Akil and had a transaction with the first accused.

11. In fact, the petitioner's father approached the Division Bench of this Court by way of filing a petition in H.C.P(MD) SR.No.39272 of 2022 for the petitioner's illegal detention. The Honourable Division Bench of this Court, by order dated 18.11.2022, observed that "whether there was a mistaken identity and the detenu has been falsely roped in this case, is a matter of fact, which cannot be decided in a Habeas Corpus Petition. Therefore, it was left open to the petitioner to raise all the ground before the competent Court". Aggrieved by the same, the father of the petitioner also preferred a Special Leave to Appeal (Crl.) No.901 of 2023 and the same was also dismissed as withdrawn, by order, dated 25.01.2023. On the date of occurrence, namely on 21.01.2022, the petitioner contacted the first accused frequently and so far he called him more than 40 times. The tower location also indicates that the petitioner and the first accused were present at the scene of crime on 21.01.2022. These are all the materials to connect the petitioner and the first accused who was found in possession of contraband of 46 kgs of Ganja, which is a commercial quantity. That apart, this Court dismissed the bail application filed by the petitioner in Crl.O.P(MD) No.21903 of 2022 only on 01.03.2023 and this Court finds no change in circumstances to consider the petitioner's bail application. Hence, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

sd/-

10/04/2023

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



TO

1. The Superintendent, Central Prison, Madurai.
2. The Inspector of Police,
K.Pudur Police Station,
K.Pudur,
Madurai City, Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.NIRANJAN.S.KUMAR, Advocate (SR-5646[I] dated
11/04/2023)

ORDER
IN
CRL OP (MD) No.5602 of 2023
10.04.2023

NA/VR/SAR-2/11.04.2023/5P/5C