



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 19/04/2023

WEB COPY

PRESENT

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

CRL OP(MD) . No.6541 of 2023

Kalmi Durga Prasad

... Petitioner/Accused No.5

Vs

State through
The Inspector of Police,
V.K.Puram Police Station,
Tirunelveli District.
(Crime No.376 of 2022)

... Respondent/Complainant

For Petitioner : Mr.K.Prabakaran ,Advocate

For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No.376/2022 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A5, who was arrested and remanded to judicial custody on 11.02.2023 for the offences punishable under Sections 8 (c) r/w 20(b)(ii)(C) and 29(i) of NDPS Act and Section 328 of IPC, in Crime No.376 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 15.12.2022 at about 10.00am., on the basis of the secret information, the Sub-Inspector of Police, some other police along with Tahsildar, Ambasamudram Taluk, went to the place of Ambasamudram to Tana Main Road nearby Muthaliyarpatti in Kottaivilaipatti Vilakku, at that time, the vehicle bearing Registration No.TN 92 F 1670, Ashok Leyland Dost was intercepted by them, the vehicle driver/A1 and also the vehicle were searched by the respondent police and found that 50 boundless into the box kept in the top of the cabin of the Ashok leyland dost and tools box also, totally 100kg of Ganja seized from the above said vehicle. A1 has confessed that A1 to A3 went to Adrapradesha dn purchased Ganja in order to sell in their area. Hence, this case.



3. The learned counsel for the petitioner submitted that the petitioner has been implicated as an accused without anybody's confession statement. Even according to the case of the prosecution from the confession of A1, A2 to A4 were implicated as accused and they used to purchase the contraband from Andrapradesh to sell in Tamil Nadu. The first accused was only found in possession of contraband weighing 100kgs of Ganja. No recovery was made as against the petitioner and absolutely, there is no other material in order to connect the petitioner in this crime. The petitioner was arrested and remanded to judicial custody on 11.02.2023, whereas the first accused was arrested and remanded to judicial custody on 15.12.2022. While arresting A1, he did not state anything about the petitioner and only after arresting the petitioner, the respondent police recorded confession statement, in which the petitioner was also implicated as an accused. Therefore, he sought for bail.

4. Per contra, the learned Additional Public Prosecutor filed counter affidavit and submitted that the petitioner has been implicated as an accused on based upon the confession statement of A1. A1 clearly stated that all the accused persons used to purchase contraband from A5, who belongs to Andrapradesh. He also produced tower locations on 12.12.2022, immediately on the date of purchase of Ganja from A5, they had spoken through their mobile phone. He also produced toll route from the place of purchase of Ganja to the place of scene of crime. That apart, A1 transferred amount in order to produce Ganja to the account of petitioner's wife. Therefore, he opposed to grant bail.

5. In view of the above submissions, the petitioner was also in conscious and constructive possession of contraband, which is the commercial quantity. That apart, the petitioner failed to make out a *prima facie* case in order to satisfy the twin conditions as contemplated under Section 37 of the NDPS Act before this Court. Therefore, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

sd/-
19/04/2023

/ TRUE COPY /

/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



RMK
TO

- 1 THE INSPECTOR OF POLICE
V.K.PURAM POLICE STATION,
TIRUNELVELI DISTRICT.
- 2 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.6541 of 2023
Date :19/04/2023

PKP/CG/SAR-1/27.04.2023/ **3P/4C**