



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

Date : 12/04/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN
CRL OP(MD). No.6665 of 2023

WEB COPY

Rajaram

... Petitioner / Accused No.1

Vs

State represented by
The Inspector of Police,
Alanganallur Police Station,
Madurai District.
(Crime No.186 of 2022.)

... Respondent / Complainant

For Petitioner : M/s.Jegadeesh Pandian M, Advocate.

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

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

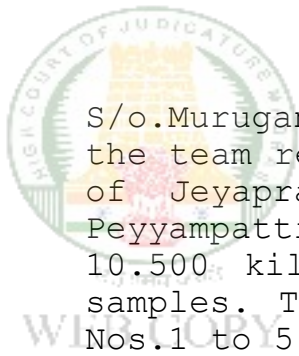
PRAYER :-

To release the Petitioner/A1 on bail in CC No.1014/2022 on the file of the learned Principal Special Court for Trial of NDPS Act Cases, Madurai.

ORDER : The Court made the following order :-

The petitioner/A1, who is facing a case for the offence under Section 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act in C.C.No.1014 of 2022 on the file of the learned Principal Special Court for Trial of NDPS Act Cases, Madurai in Crime No.186 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 10.07.2022 at about 16.00 hrs, the Sub Inspector of Police, Ganeshnagar Police Station had received a secret information, based on that they took an inspection at about 16.20 hours near a grave yard, Sangaiya Nagar, Pothumbu, where they found two persons pass on the road bearing Reg.No.TN-58-AW-2398 Bajaj CT 100 and they were apprehended namely, the petitioner/A1 and his wife Prema, on enquiry they have seized 5 kilograms of ganja and they were arrested in the occurrence spot, Subsequently, a confession statement was recorded from the petitioner, based on that at about 19.50 hrs, the petitioner alleged to have been identified one Athiraja at Kamalapatti, tank edge, from him they have seized 4 kilograms of ganja. Thereafter, on confession of Athiraja/A3, they went to the house of one Jeyaprakash,



S/o.Murugan at Kallapanpatti and they found Jeyaprakash, f n, the team recovered 2 kilograms of ganja. Subsequently, on confession of Jeyaprakash, the team went to the house of one Ravi at Peyyampatti on 11.07.2022 at about 00.15 hrs, and they recovered 10.500 kilograms of ganja and the same was seized after taking samples. Thereafter, the respondent police had brought the accused Nos.1 to 5 to the respondent police and registered the case in Crime No.186 of 2022 under Sections 8(c) r/w 20(b)(ii)(c) of NDPS Act and Section 25 of NDPS Act by arraying accused Nos.1 to 5.

3.The learned counsel for the petitioner submitted that the co-accused have already been granted bail by this Court in Crl.O.P.(MD) Nos.356, 408 and 498 of 2023, 23137 of 2022 and 410 of 2023. He would further submit that the case has been charge sheeted and the same has been taken cognizance in C.C.No.1014 of 2022 on the file of the learned Principal Special Court for Trial of NDPS Act Cases, Madurai. Hence, he seeks bail.

4.The learned Additional Public Prosecutor submitted that all the accused persons were found in possession of contraband weighing 21.500 kg of Ganja, which is commercial quantity. There is bar under Section 37 of NDPS Act and they are not entitled for bail and Section 37 (B) of NDPS Act is very much clear that no person accused of an offence punishable under Section 19 or Section 24 or Section 27-A of NDPS Act and also for offences involving commercial quantity. Thus it is clear that those who involving in the case of commercial quantity, there is a bar under Section 37 of NDPS Act. Therefore, they are not entitled for bail. He also relied upon the judgment of this Court, in which, this Court in Crl.O.P(MD)Nos.172, 1621, 1628 and 2119 of 2021 dated 30.04.2021, wherein, it had been held that if it is established that the contrabands were recovered from multiple accused concerned in a case in the course of same transaction, it cannot be split up individually and the entire contraband seized from one or several accused have to be taken into consideration for determining whether the quantity seized is commercial quantity or not.

5.The learned Additional Public Prosecutor further submitted that the petitioner along with other accused were found in illegal possession of 21.500 kgs of Ganja and hence, he vehemently opposed to grant bail to the petitioner.

6.Heard and perused the materials available on record.

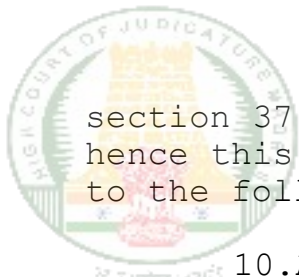
7.Admittedly, the petitioner along with A2 were found in possession of 5 kg of Ganja. The contraband was seized from them by seizure mahazar. Thereafter, the samples were taken and it was sent for chemical analysis. On the confession statement of A1 and A2, the third accused was found in possession of contraband weighing 4 kg. The said contraband was seized by seizure mahazar and the samples were sent for chemical analysis. Again on the confession statement of



third accused, the accused No.4 was found in possession of 2 kg of Ganja and on the confession statement of the 4th accused, the 5th accused was in possession of weighing 10.500 kg of Ganja. On the strength of the confession statement of the accused No.5, the accused No.6 has been implicated as an accused. No recovery was made from A6. Though all the accused persons were found in possession of ganja in single date within a time of 1 and 1 ½ hours, the entire contraband were seized by separate mahazar. Now only point consideration is that all wherein concession and constructive joint possession of contraband or not?

8. On perusal of charge sheet, it is seen that each and every accused were found in possession of ganja and search memo and the contraband were seized by separate mahazar. On perusal of confession statement of A4-Jeyaprakash revealed that he had acquaintance with the third accused. While he was going to Vedharanyam for loading, he had acquaintance with the 6th accused. A6 used to purchase ganja from various places and supplied ganja to various persons. He further confessed that he purchased contraband from A6 and kept the same in the house of the 5th accused. Thereafter, he had given a part of the Ganja to the third accused and he was in possession of 2 kg of Ganja. Whereas, on perusal of the confession statement of the 5th accused revealed that he had acquaintance with the 4th accused and he used to purchase Ganja from Andhra Pradesh. After purchase of contraband from Andhra Pradesh, he had kept it in the house of the 5th accused and he had taken part of Ganja for sale. Likewise, on perusal of the 6th accused, FIR revealed that the 4th accused purchased the contraband from Andhra Pradesh and thereafter, sold to various persons. Admittedly, the FIR was registered after recording the confession statement from the 4th accused. Therefore, as per the confession statement of the 4th accused, he used to purchase contraband from the 6th accused, who is in Vedharanyam, whereas, as per the FIR, the 4th accused used to purchase the contraband from Andhra Pradesh. That apart, even according to the confession statement of the accused persons, each and every accused was entrusted the contraband individually. They were not in joint possession of contraband. Therefore, there is no concession or joint possession of contraband. Therefore, the judgment cited by the learned Additional Public Prosecutor is not applicable in the case on hand. Since all the accused persons were found in possession of contraband separately and all the contraband were seized by separate seizure mahazar, there is absolutely no evidence to connect all the accused persons, except the confession statement, in order to say that the contraband seized from all the accused persons are concession and joint possession to attract commercial quantity. Therefore, there is no bar under Section 37 of NDPS Act, considering the applications of bail of the petitioner.

9. Taking into consideration of the facts and submissions made by the learned counsels and also taking into consideration the https://www.mca.gov.in/ incarceration, this Court is of the opinion that rigor of



section 37 of the NDPS Act will not be applicable to the petitioner, hence this Court is inclined to grant bail to the petitioner subject to the following conditions:

10. Accordingly, the petitioner shall donate a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the credit of the RAY OF LIGHT FOUNDATION, A/C No.50100078904233, IFSC Code ; HDFC0001864, No.10, Nageswara Road, Nungambakkam, Chennai, Tamil Nadu 600 034, Ph.No.8939065431 and on such donation the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two blood related sureties each for a like sum to the satisfaction of the Principal Special Court for Trial of NDPS Act Cases, Madurai, and on further conditions that:

(a) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(b) the petitioner shall report before the Principal Special Court for Trial of NDPS Act Cases, Madurai, daily twice i.e. at 10.30 a.m., and 05.00 p.m., on all working days until further orders;

(c) the petitioner shall not commit any offences of similar nature;

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

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

(f) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court 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 Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala** [(2005)AIR SCW 5560];

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

sd/-
12/04/2023

/ TRUE COPY /

12/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



To

1.The Additional District Judge,
Principal Special Court for Trial of NDPS Act Cases, Madurai.

2.The Inspector of Police,
Alanganallur Police Station,
Madurai District.

3.The Superintendent,
Central Prison,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Officer Incharge,
Ray of Light Foundation,
No.10, Nageswara Road,
Nungambakkam,
Chennai, Tamil Nadu - 600 034.

+1 CC to M/s.JEGADEESH PANDIAN M, Advocate (SR-5793[I] dated
12/04/2023)

ORDER

IN

CRL OP(MD) No.6665 of 2023

Date :12/04/2023

ED/VR/SAR- (12/04/2023) 5P 7C