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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 27/04/2023

PRESENT

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

CRL OP(MD). 6806 of 2023

Balasubramanian @ Madathan

... Petitioner/A5

Vs

State rep., by
The Inspector of Police,
Ambasamudram Town Police Station,
Tiruenelveli District.
(Crime No.214 of 2022)

... Respondent/Complainant

For Petitioner	: Mr.V.Kathirvelu Senior Counsel for Mr.K.Prabhu
For Respondent	: Mr.T.Senthilkumar, Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No.214 of 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 29.12.2022 for the offences punishable under Section 328 of IPC and Sections 8(C), 20(b)(ii)(C), 25 and 29(1) of NDPS Act in Crime No.214 of 2022 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 18.12.2022 at about 08.15 hours, based on the secret information, the respondent police went to vehicle checkup near Railway Gate at Mannarkovil Junction to Agasthiyarpatti Main Road. At that time, one Mahindra Bolero City Pickup vehicle bearing Registration No.TN 72 BT 4799 was intercepted by the respondent police and on enquiry, the respondent police found that the driver/A1 of the vehicle, namely Esakki Muthu and another person/A2, namely Muthuraman were in possession of 21.150kgs of Ganja in 11 parcel tapped with brown color packing tape and kept inside the Big Tractor Tyre. Thereafter, A1 has confessed that he purchased the Ganja with the help of A3 Esakki Pandi, A4 Siva and



petitioner/A5 Balasubramanian @ Madathan from Chennai. The accused collectively put money of Rs.5,28,750/- to purchase the contraband. Further, A1 disclosed the fact that as per the instruction of A3 to A5, he brought the contraband to Pabanasam to sell in the School, College and tourist places of Pabanasam area for higher profit. A4, who is the son of the petitioner, only maintained the account details of Ganja business. Hence, the case.

3. The learned Senior Counsel appearing for the petitioner submitted that there are totally 5 accused, in which, the petitioner is arrayed as A5. Except the confession statement of co-accused, no other material produced to connect the petitioner in this case. Admittedly, no recovery was made from the petitioner. The petitioner, who is being the father of A4, has been falsely implicated in this case. Though the petitioner already involved in similar type of one case on the file of Manur Police Station, in which, 2kgs of Ganja was recovered from the petitioner. Only because of said fact, the present case was foisted against the petitioner. Even according to the case of the prosecution Ganja business has been done by the other accused persons. Therefore, he seeks bail.

4. The respondent police filed counter affidavit. The learned Additional Public Prosecutor submitted that all the accused persons collectively put money to the tune of Rs.5,28,750/- to purchase the contraband. The first accused disclosed that only as per the instructions of A3 to A5, he brought the Ganja to Pabanasam to sell the same in School, College and Tourist place in Pabansam area. The fourth accused, who is the son of A5, also absconded. Therefore, all the accused persons were in conscious and constructive possession of contraband weighing 21.150kgs and Rs.40,000/- . He further submitted that investigation is pending because of non-securing the other accused. Therefore, he vehemently opposed to grant bail to the petitioner.

5. On perusal of records it revealed that the petitioner is arrayed as A5. A1 & A2 were found in possession of contraband weighing 21.150kgs of Ganja. As per the confession statement of A1, the petitioner has been implicated as an accused. The petitioner is none other than the father of A4. Though the petitioner was involved in similar case in Crime No.494 of 2021 under the NDPS Act, he was arrested and subsequently, released on bail. Except the confession statement of A1, there is no other material produced to connect the petitioner along with other accused persons. No recovery was made from the petitioner and there was no money transaction between the petitioner and other accused persons. That apart, even till today, the respondent police did not complete the investigation and still it is pending. Therefore, the petitioner has made out a *prima facie* case in order to satisfy the twin conditions as contemplated under Section 37 of NDPS Act.



6. Considering the facts and circumstances of the case and also the period of incarceration by the petitioner from the date of his arrest on 29.12.2022, this Court is inclined to grant bail to the petitioner.

7. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of learned Principal Special Court for EC and NDPS Act, Cases, Madurai, and on further conditions that :-

[a] the petitioner and sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent police, daily at 10.30 a.m., 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 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/-

27/04/2023

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27/04/2023

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

Rmk

TO

1.The Principal Special Court for EC & NDPS Act Cases, Madurai.

<https://www.mhc.tn.gov.in/judis>
2.The Superintendent, Central Prison, Tirunelveli.



3.The Inspector of Police,
Ambasamudram Town Police Station,
Tirunelveli District.

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

+1 CC to M/s.PRABHU K, Advocate (SR-6765[I] dated 27/04/2023)

ORDER

IN

CRL OP (MD) No.6806 of 2023

Date :27/04/2023

SS/BUC/SAR /27/04/2023/4P/6C