



WEB COPY



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 19.04.2023

PRESENT

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

CRL OP(MD). No.7168 of 2023

Agustin

... Petitioner/A2

Vs.,

State rep., by
The Inspector of Police,
Thiruppallai Police Station,
Madurai City,
Madurai.

(In Crime No.168 of 2022)

... Respondent/Complainant

For Petitioner : Mr.A.Jeyaram

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

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

PRAYER :-

For Bail in Crime No.168/2022 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/A2, who was arrested and remanded to judicial custody on 04.08.2022 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 25, 29(1) and 25(1)(a) of NDPS Act in Crime No.168 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 04.08.2022 at about 09.00 p.m., based on the secret information, the respondent police conducted vehicle checkup and they found A1 in a two-wheeler. On seeing the police, he fled away from the place. On suspicion, the respondent police caught hold A1 and seized 10kgs of Ganja from him. Further investigation, A1 confessed about the involvement of the other accused persons. Based on his confession, the respondent police conducted search at A1's house, wherein, the respondent police recovered another 30kgs of Ganja. Totally 40kgs of Ganja was recovered in the present case. Hence, the case.

3.The learned counsel for the petitioner would submit that the petitioner is arrayed as A2. Even according to the case of the prosecution, on the confession statement of the first accused, the



petitioner has been implicated as accused. The first accused was already arrested with contraband weighing 10kgs of Ganja. After recording his confession, the respondent police went to the first accused's house along with A1 and recovered another 30kgs of Ganja. Based on his confession, the petitioner along with other accused persons were implicated as accused. Though the petitioner was named accused in the FIR, there was no recovery from him. Except the confession, no material was available to show that the petitioner was went along with A1 to purchase the contraband at Andhra Pradesh. He further submitted that the co-accused already released on bail by this Court in CrI.O.P(MD).Nos.4902 and 5799 of 2023 on 29.03.2023. Hence, he would seek for bail.

4.The learned Additional Public Prosecutor would submit that all the accused persons were doing Ganja business together. They used to go to Andhra Pradesh in order to purchase contraband. Though on the date of occurrence, the petitioner was not present along with A1, they are also doing Ganja business along with A1. He would further submit that the investigation has been completed and the final report has already been filed before the learned Principal Special Court for NDPS Act Cases, Madurai and the same has been taken cognizance in C.C.No.81 of 2023. Hence, he opposed to grant bail to the petitioner.

5.It is seen from the records that the first accused has already been arrested with contraband weighing 10kgs of Ganja. On his confession, the respondent police went to the house of the first accused and seized 30kgs of Ganja. Admittedly, the petitioner was not present along with the first accused at the time of seizure of contraband. On perusal of the confession statement of the first accused also reveals that except purchasing of Ganja from Andhra Pradesh along with the other accused persons, there is absolutely no material to connect the petitioner along with the first accused. The prosecution has also failed to produce any material to connect the petitioner with the first accused. Admittedly, there was no recovery from the petitioner and he has also been implicated as accused only on the strength of the confession statement of the first accused. Except the present case, the petitioner had involved in one previous case for the offence under Section 392 IPC. Therefore, the petitioner made a *prima facie* case to satisfy the twin conditions as contemplated under Section 37 of NDPS Act.

6.Considering the above facts and circumstances of the case and also considering the period of incarceration, this court is inclined to grant bail to the petitioner subject to the following conditions:

[a] Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two blood related sureties each for a like sum to the satisfaction of the Principal Special Court for EC and NDPS Act Cases, Madurai, and on further conditions that:



[b] the 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.

[c] the petitioner shall report before the learned Principal Special Court for EC and NDPS Act Cases, Madurai in C.C.No.81 of 2023 daily at 10.30 a.m., until further orders;

[d] the petitioner shall not commit any offences of similar nature.

[e] the petitioner shall not abscond either during investigation or trial.

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[g] 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].

[h] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-

19/04/2023

/ TRUE COPY /

19/04/2023

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

RMK
TO

- 1 THE PRINCIPAL SPECIAL COURT
FOR EC AND NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
THIRUPPALAI POLICE STATION, MADURAI CITY
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.JEYARAM A, Advocate (SR-6092[I] dated 19/04/2023)

ORDER

IN

CRL OP(MD) No.7168 of 2023

Date :19/04/2023