



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 01/06/2023
PRESENT

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

CRL OP(MD) . No.9171 of 2023

U.Surya @ Soorya,

... Petitioner/Accused 5

Vs

The State rep.by
The Inspector of Police,
Kadayanallur Police Station,
Tenkasi District.
Crime No.337/2022.

... Respondent/Complainant

For Petitioner : M/s.MOHAMED HASHIM.A.,
Advocate.

For Respondent : Mr.T.SENTHIL KUMAR,
Additional Public Prosecutor

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

PRAYER :- For Bail in Crime No.337 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 03.10.2022 for the offences punishable under Sections 147, 148, 294(b), 353, 307 and 506(2) of IPC, Section 25(1A) of Arms Act, 1959, and Sections 8(C) and 20(b)(ii)(A) of NDPS Act @ 147, 148, 294(b), 353, 307 and 506(2) of IPC, Section 25(1A) of Arms Act, 1959 and Sections 8(C) and 20(b)(ii)(C) of NDPS Act in Crime No.337 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 03.10.2022 at about 02.30 hours, when the respondent police mounted in surveillance in Muthukrishnapuram at Kadayanallur, at that time, the respondent police received a secret information that some persons were staying in a house belongs to one Saroja in a suspicious manner with deadly weapons. The respondent police went to that house and knocked one of the five houses in the first floor of that building, bearing Door No.3/1AB. That house was locked inside. When the respondent police asked to open the door, nobody responded and did not open the doors. Since the accused persons refused to open the door of the house, the respondent police broke the doors and tried to enter the house. At that time, A1 to A6 attacked the respondent police with deadly

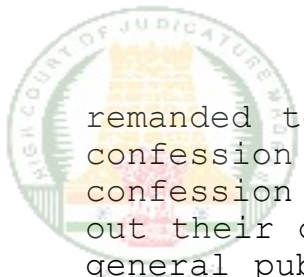


weapon and also abused them. But, the respondent police caught the accused persons, seized the contraband weighing 500gms of ganja, 6 aruval, 6 cell phones and vehicle. Hence, the case.

3.The learned counsel appearing for the petitioner submitted that there are totally 7 accused, in which, the petitioner is arrayed as A5. Even according to the case of the prosecution, A1 to A6 were found in possession of contraband weighing 500grms along with deadly weapons in the rent house owned by one Saroja. A1 to A6 were arrested and seized the weapons along with contraband and they were also remanded to judicial custody on 03.10.2022. After remand, the respondent police filed a petition before the learned Judicial Magistrate, Tenkasi, for police custody of all accused persons and the same was dismissed. As against that order, the respondent police filed the revision before the learned Additional District Judge (FTC), Tenkasi, in Crl.R.C.No.46 of 2022 and the same was allowed on 18.11.2022 and police custody was ordered in so far as A3 to A5 are concerned. Thereafter, A3 to A5 were taken to police custody and recorded their confession statement. As per their confession statement, the respondent police recovered 24.50kgs of Ganja from them. Therefore, it is completely false case put up as against the petitioner to attract offences under commercial quantity. The respondent police recovered 500 grams of Ganja from A1 to A6. After two months, again the respondent had recovered the alleged contraband. Further submitted that the petitioner was arrested and remanded to judicial custody on 03.10.2022. Till today, the respondent police did not complete the investigation and file a final report. He further submitted that A3 was already granted bail by this Court in Crl.O.P.(MD)No.7505 of 2023, dated 27.04.2023. Hence, he seeks bail.

4.The learned Additional Public Prosecutor submitted that there are totally 7 accused, in which, the petitioner is arrayed as A5. A7 is still absconding and as such, the respondent police could not able to complete the investigation and file a final report. Though the confession statement was recorded from A1, A2 and A6 on the date of their arrest, the petitioner refused to give any confession statement. Therefore, the respondent did not record any confession statement. Pursuant to the direction of revision Court, the petitioner along with A3 and A4 were taken into police custody and while recording the confession statement of A3 to A5, they categorically stated that remaining contraband were in the same house. Immediately, made search and found they were in possession of 24.50kgs of Ganja. After completing all formalities under NDPS Act, all the accused persons were remanded to judicial custody. That apart, this Court dismissed the application filed by the petitioner by order dated 21.03.2023. Therefore, he vehemently opposed to grant bail to the petitioner.

5.On perusal of records it revealed that there are totally 7 accused persons in which, the petitioner is A5. A1 to A6 were arrested and



remanded to judicial custody on 03.10.2022, on the same confession statement of A1, A2 and A6 were recorded. On perusal of confession statement of A2, it was revealed that in order to meet out their daily expenses, they purchased 1kg of ganja to sell it to general public. On 03.10.2022, they consumed alcohol and also used Ganja in the house, on seeing it, someone informed the same to the respondent police. Therefore, the respondent police entered into the house, where they are residing and all the accused persons attempted to attack the police persons. But, the respondent police arrested and recovered Aruval and ½ kg of ganja. Thereafter, they remanded to judicial custody, on the date of remand itself, the respondent requested for police custody of all the accused persons. However, it was rejected by the learned Judicial Magistrate. Aggrieved by the same, the respondent police preferred revision and the same was partly allowed as against A3 to A5. Thereafter, A3 to A5 were taken into police custody. After recording the confession statement, that too after period of 55 days, the alleged contraband weighing 24.50kgms was seized in the same house.

6.It is seen from the confession of A1, A2 and A6, they have purchased 1kgs of Ganja and they sold out 500grams and remaining 500grams recovered from the house of the accused. There was no whisper about the alleged contraband weighing 24.050kgs. Infact on 03.10.2022 the respondent made search and recovered 500grams of Ganja. Therefore, the entire prosecution case is not believed. The respondent police in order to rope all the accused persons into commercial quantity, foisted false case as against the accused persons. 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.

7.Considering the facts and circumstances of the case and also the period of incarceration by the petitioner from the date of his arrest on 03.10.2022, this Court is inclined to grant bail to the petitioner.

8.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 Sessions Judge 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 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/-

01/06/2023

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

SJI

TO

- 1 THE PRINCIPAL SESSIONS JUDGE
FOR EC AND NDPS ACT CASES, MADURAI
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 3 THE INSPECTOR OF POLICE,
KADAYANALLUR POLICE STATION,
TENKASI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.MOHAMED HASHIM.A. Advocate SR.No.7918

ORDER

IN

CRL OP(MD) No.9171 of 2023

Date :01/06/2023

SA/SSS/SAR. /01.06.2023/4P/6C