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CRL OP(MD).



23

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

RESERVED ON : 14.06.2023

PRONOUNCED ON : 20.06.2023

PRESENT

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

CRL OP(MD) . No.9842 of 2023

C.Vijayalakshmi

... Petitioner/Accused No.2

Vs

State represented by,
The Inspector of Police,
Thirupalai Police Station,
Madurai.
(Crime No.81 of 2023).

... Respondent/Complainant

For Petitioner : Mr.A.Ramesh, Senior Counsel
for Mr.Mohammed Ali Jinna
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in Crime No.81 of 2023 on the file of the Respondent police.

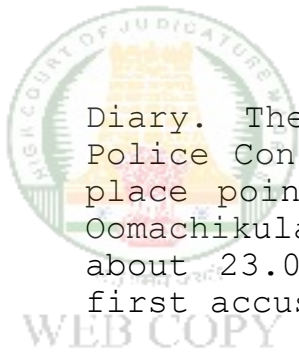
ORDER : The Court made the following order :-

The petitioner/Accused No.2, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 8(c), 20(b)(ii)(c), 25, 29(1), 25(1)(a) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.81 of 2023 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that when the Sub-Inspector of Police was on duty in Thirupalai Police Station on 12.03.2023 at about 22.00 hours, the Police had appeared in person and informed that one Mr.Parameswaran, S/o.Arumugam, the first accused herein had been smuggling and transporting Ganja in his Car from Andhrapradesh and selling it to customers. It was further informed that the first accused is likely to transport Ganja in his Toyota Fortuner Car bearing Registration No.TN-65-AE-6565 at midnight on 12.03.2023, near Kadachanenthall - Oomachikulam Road near Fish Shop Junction where the first accused is likely to drive the vehicle with contraband.

3.The Sub-Inspector of Police recorded the information in a separate paper and he also recorded the information in the General

<https://www.mhc.tn.gov.in/judis>



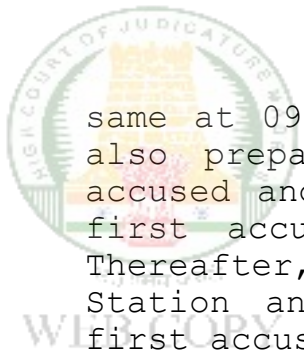
Diary. Thereafter, the Sub-Inspector of Police along with Police Constables started from the Thirupalai Police Station to the place pointed out by the Police Informant namely Kadachanenthal - Oomachikulam Road near Fish Shop Junction and reached the place at about 23.00 hours. They were hiding near the place expecting the first accused.

4.As expected, the first accused was found driving the vehicle bearing Registration No.TN-65-AE-6565 towards Kadachanenthal Junction at about 23.30 hours. The Sub-Inspector of Police and the other Police party immediately intercepted the vehicle. On seeing the police, the first accused was trying to escape and the police party managed to secure the first accused. The Sub-Inspector of Police has informed about the right of the accused to be searched in the presence of the Judicial Magistrate in accordance with Section 50 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act). However, the first accused was alleged to have waived his right to be searched as contemplated under Section 50 of the Narcotic Drugs and Psychotropic Substances Act. Hence, the police party proceeded to search the vehicle and found two white colour gunny bags, each containing 21 kgs of Ganja (totally 42 kgs). The contraband was seized by Mahazar and the first accused was arrested by the police by informing the reason for arrest.

5.The first accused had voluntarily given a confession statement without any influence or threat. The confession statement was recorded by the police in the presence of witnesses from 00.30 hours to 02.15 hours and the signature of the accused was obtained in the said statement. He has narrated the entire sequence of events and modus operandi adopted by him in smuggling and transporting the contraband from Visagappattinam, Andhrapradesh. He has also confessed that he used to affix "Advocate Sticker" and "Press Sticker" in all his luxury Cars as per the advice of his wife, the petitioner herein and transport the contraband to various places. In the event of intercepting the vehicle by the police, he would escape from the clutches of police by showing the Advocate Sticker.

6.On the basis of his confession, the first accused was taken to Dindigul and seized a BMW Car bearing Registration No.TN-01-AS-1111 which was parked in Spencer Compound (Car Parking Slot) situated on the Dindigul Scheme Road. The police party recovered 30 kgs of Ganja from the above Car. After taking a sample of 50 grams from the gunny bag, the remaining contraband was packed in the very same gunny bag and sealed by the police. They have also recovered a knife from the Car and prepared Mahazar for the above recoveries.

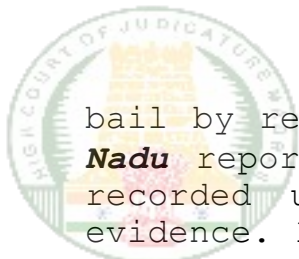
7.Thereafter, the first accused was taken to his dwelling house at Ponnagaram Natham Road, Vijayamadhavan Nagar and conducted a house search. The police party has recovered a sum of Rs.4,30,000/- in cash and other electronic gadgets including Laptop and 12 Mobile phones. They conducted the search from 07.15 hours and completed the



same at 09.15 hours on 13.03.2023. The Sub-Inspector of Police as also prepared Mahazar and signed in the presence of the first accused and the witnesses for having recovered the properties. The first accused and the witnesses have also signed the Mahazar. Thereafter, the first accused was taken to the Thirupalai Police Station and First Information Report was registered against the first accused and the petitioner for the offences stated above.

8.The learned senior counsel appearing for the petitioner submitted that the petitioner after completion of her Graduation in Master of Science, she also completed Law course and obtained a degree in Bachelor of Law in the year 2012. She enrolled as an Advocate in the year 2013 in the Bar Council of Tamil Nadu and Pondicherry and she is practising in and around Madurai District and also before this Court. She fell in love with the first accused and got married in the year 2005. At the time of their marriage, he had been running a Poultry Farm and the same was not successful. Subsequently, he had been doing the business of purchasing cars and selling the same in second-hand. Due to their wedlock, they had two sons. While being so, the first accused was involved in so many cases and he is facing trial. Therefore, the petitioner got separated from him and she is living separately in Madurai. Hence, she is no way connected with the first accused and she was never involved in any crime along with the first accused. The petitioner is being an Advocate used to advise him and even then, the first accused involved in so many cases. Therefore, she got separated and she is living separately. Now, in the present case, she has been implicated as an accused only on the confession statement of the first accused. She happens to be the wife of the first accused and except the said relationship, there is no other involvement of the petitioner to implicate herself as an accused. The prosecution also failed to produce any single material except the confession statement of the first accused to connect the petitioner along with the first accused. Therefore, the respondent foisted a false case as against the petitioner with an intention to wreak vengeance as against the first accused. So far, the petitioner has never been involved in any case and it is a first case registered against the petitioner.

9.The learned senior counsel appearing for the petitioner further submitted that the Honourable Supreme Court of India in the case of **Tofan Singh Vs State of Tamil Nadu** reported in **2021(2)SCC (Cri) 246** held that statement recorded under Section 67 of NDPS Act cannot be used as a confessional statement in trial as an offence under the NDPS Act. It cannot be relied upon as a confession statement in the trial and the very question of considering and deciding the validity of the said confession statement at trial does not arise at all. Therefore, the confession statement of the first accused cannot be relied as against the petitioner. This Court in the batch of matters considered the application for anticipatory



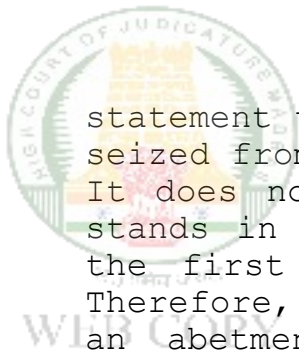
bail by relying upon the Judgment of **Tofan Singh Vs State Nadu** reported in **2021(2)SCC (Cri) 246** and held that the statement recorded under Section 67 of the NDPS Act is inadmissible in evidence. He also relied upon the batch of anticipatory bail orders passed by this Court, in which, this Court vide **Cr1.O.P (MD) No. 5093 of 2021 etc., dated 23.12.2021 (Muruganandham and another Vs. The Inspector of Police)**, held as follows:-

"8. Section 25 of the Indian Evidence Act contemplates that no confession made to a Police Officer shall be proved as against a person accused of any offence. The very object of Section 25 is to ensure that the person accused of offence would not be induced by threat, coercion or force to make a confessional statement and the Police Officer is to make every effort to collect or gather the evidence with regard to the commission of offence, but not the confession while the accused is under custody.

9. It is settled law that statements made by an accused before Police Officer, which amount to confessional statement is clearly barred under Section 25 of the Indian Evidence Act and the only exception is under Section 27 of the Indian Evidence Act, which provides that any portion of the information in the confession statement, which leads to discovery of any new fact or thing can be proved.

10. Applying the legal dictum laid down by the Hon'ble Supreme Court in Tofan Singh's case any statement recorded under Section 67 of NDPS Act cannot be treated as a confession statement in the trial for the offence under the provisions of NDPS Act. Since the statement under Section 67 of the NDPS Act cannot be treated and relied as a confession statement in the trial itself, then the very question of considering and deciding the validity of the said confession statement at the trial does not arise at all. Moreover, in the absence of any recovery from the accused, now seeking bail, the confession of co-accused implicating the present accused cannot be relied or looked into, so far as the present accused is concerned."

10. The learned senior counsel appearing for the petitioner would submit that even according to the prosecution, no recovery was made from the petitioner. In the absence of any recovery from the petitioner, the confession of co-accused implicating the petitioner for abatement cannot be relied on or looked into so far as the petitioner is concerned. Therefore, the provision under Section 37 of the NDPS Act would not attract as against the petitioner, since she had been implicated as an accused only on the confession statement recorded under Section 67 of the NDPS Act. Even, a perusal of the confession statement of the first accused revealed that all



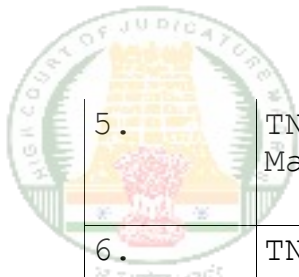
statement to connect the petitioner with the first accused. The cars seized from the first accused are contained in the Advocate sticker. It does not mean that the petitioner owned the said cars. No car stands in the name of the petitioner and all the cars belonged to the first accused, that too, he purchased the same for resale. Therefore, under no stretch of the imagination, it can be said to be an abetment under Section 29(1) of the NDPS Act. Except the relationship between the first accused and the petitioner as husband and wife, she cannot be saddled with the criminal liability of abetment. Therefore, on the basis of the bald and vague allegation, the petitioner cannot be implicated as an accused in the absence of any specific allegation and any iota of material evidence. Therefore, he prayed for anticipatory bail to the petitioner.

11.The learned Additional Public Prosecutor appearing for the respondent would submit that there are huge materials available to connect the petitioner along with the first accused except their relationship of husband and wife. During the investigation, they collected call details, bank transactions and CDR report, which revealed that the petitioner was actively involved in drug trafficking along with the first accused. The occurrence took place on 12.03.2023 and the investigation is still under progress. So far, the respondent identified 27 mobile numbers based on SIM cards and also identified 30 mobile numbers based on IMEI numbers. Therefore, the active participation of the petitioner along with the first accused is evident from all those materials and hence, her custodial interrogation is very much required in this case and opposed for granting anticipatory bail to the petitioner.

12.Heard the learned senior counsel appearing for the petitioner and the learned State Public Prosecutor appearing for the respondent.

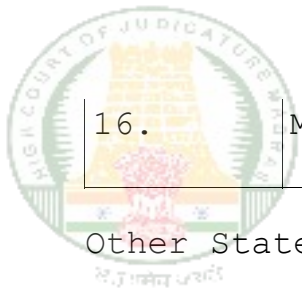
13.On perusal of the records revealed that the first accused so far involved in the following cases:-

Sl.No.	Car No. & Model	Seized in Cr.No. & P.S
1.	TN 65 AE 6565 Toyota Fortuner	Thiruppalai Police Station, Madurai City. (Crime No.81 of 2023)
2.	TN 01 AS 1111 BMW	Thiruppalai Police Station, Madurai City. (Crime No.81 of 2023)
3.	TN 07 CD 7009 Nissan Terrano	Thiruppalai Police Station, Madurai City. (Crime No.81 of 2023)
4.	TN 03 P 9291 Hyundai I-20 Magna	Thiruppalai Police Station, Madurai City. (Crime No.81 of 2023)



5.	TN 30 D 0416 Maruti Versa	Thiruppalai Police Station, Madurai City. (Crime No.81 of 2023)
6.	TN 39 AV 8181 Ford Endeavour	Mathichiyam Police Station, Madurai City. (Crime No.217 of 2023)
7.	TN 10 AS 5395 ISUZU	Mathichiyam Police Station, Madurai City. (Crime No.217 of 2023)

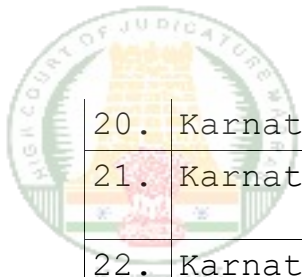
Sl.No.	District	Police Station and Crime No.	Offence U/S
1.	Madurai	Oomachikulam PS Cr.No.181/2023	468, 471 IPC & 12(1) (a) of Passport Act.
2.	Thanjavur	Medical College PS Cr.No.360/2015	379 IPC @ 379, 414 IPC
3.	Thanjavur	Town South PS Cr.No.367/2015	379 IPC @ 379, 414 IPC
4.	Thanjavur	Town South PS Cr.No.329/2015	379 IPC @ 379, 414 IPC
5.	Thanjavur	Town South PS Cr.No.342/2015	379 IPC
6.	Thanjavur	Town East PS Cr.No.367/2015	379 IPC @ 379, 414 IPC
7.	Trichy City	Ponmalai PS Crime No.215/2016	379 IPC
8.	Erode	Town PS Cr.No.300/2010	379 IPC
9.	Erode	Town PS Cr.No.618/2010	379 IPC
10.	Erode	South PS Cr.No.791/2010	379 IPC
11.	Coimbatore	Soolur PS Cr.No.945/2019	379 IPC
12.	Karur	Town PS Cr.No.3461/2008	379 IPC
13.	Karur	Town PS Cr.No.479/2008	379 IPC
14.	Madurai	Sellur PS Crime No.233/2022	8(c) r/w 20(b)(ii)(B), 29(1) NDPS Act
15.	Madurai	Sellur PS Crime No.239/2022	8(c) r/w 20(b)(ii)(B), 25 NDPS Act



16.	Madurai	Madhichiyam PS Crime No.217/2023	8(c) r/w 20(b) \---, \---, \---, 25, 29(1) NDPS Act
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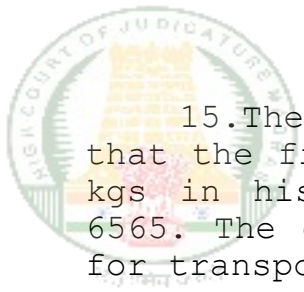
Other State Cases

S. No.	State	District	Police Station	Crime no.	Section
1.	Andhra Pradesh	Tirupathi Urban	C.c.S Tirupathi PS	472/2016	379 IPC
2.	Kerala	Thiruvananthapuram Rural	Kazhakuttam PS	1367/2017	379 IPC
3.	Kerala	Thrissur City	Mannuthy PS	570/2017	379, 201, 34 IPC
4.	Kerala	Thrissur City	Thrissur West PS	987/2017	379 IPC
5.	Kerala	Palakkad	Kozhinjampara PS	252/2017	379 IPC
6.	Kerala	Thrissur City	Thrissur East PS	1522/2017	379 IPC
7.	Kerala	Palakkad	Alathur PS	259/2007	379, 201, 411, 34 IPC
8.	Kerala	Thiruvananthapuram City	Karamana PS	1289/2017	379 IPC
9.	Kerala	Thrissur City	Ollur PS	629/2017	379 IPC
10.	Kerala	Thiruvananthapuram City	Vanchiyoore PS	572/2017	379 IPC
11.	Kerala	Thrissur City	Thrissur West PS	987/2017	379 IPC
12.	Kerala	Thiruvananthapuram City	Fort PS	59/2017	379 IPC
13.	Karnataka	Bangalore City	Hulimavu PS	165/2019	379 IPC
14.	Karnataka	Shivamogga	Vinoba Nagar PS	145/2019	379 IPC
15.	Karnataka	Tumakuru	Jaya Nagar PS	54/2021	379 IPC
16.	Karnataka	Mandya	Maddur PS	240/2019	379 IPC
17.	Karnataka	Shivamogga	Vinoba Nagar PS	145/2019	379 IPC
18.	Karnataka	Bangalore	Vishvananatha pur PS	112/2019	379 IPC
19.	Karnataka	Chitradurga	Chitradurga Extension PS	66/2019	379 IPC



20.	Karnataka	Shivamogga	Jaya Nagar PS	68/2019	379 IPC
21.	Karnataka	Bangaluru City	Indira Nagar PS	224/2014	379 IPC
22.	Karnataka	Bangaluru City	Jayaprakash Nagar PS	352/2014	379 IPC
23.	Karnataka	Kolar City	Kolar Rural PS	393/2019	379 IPC
24.	Karnataka	Tumakuru	Kyathasandra PS	156/2021	379 IPC
25.	Karnataka	Bangaluru City	Madivala PS	985/2015	379 IPC
26.	Karnataka	Bangaluru City	Micolayout PS	376/2012	Prevention of Corruption Act, 1988 (Karnataka of Dangerous Activities of Bootleggers, drugs - offenders, Gamblers, Goondas)
27.	Karnataka	Bangaluru City	Micolayout PS	485/2012	379 IPC
28.	Karnataka	Bangaluru City	Micolayout PS	382/2014	379 IPC
29.	Karnataka	Shivamogga	Shrikaripura Rural PS	164/2013	379 IPC
30.	Karnataka	Shivamogga	Shrikaripura Rural PS	Riots others	

14. Though the petitioner has been implicated as an accused on the confession statement recorded from the first accused, there are huge materials available to connect the petitioner along with the first accused except their relationship of husband and wife. During the investigation, the respondent collected call details, bank transactions and CDR report, which revealed that the petitioner was actively involved in drug trafficking along with the first accused. The occurrence took place on 12.03.2023 and the investigation is still under progress. So far the respondent identified 27 mobile numbers based on SIM cards and also identified 30 mobile numbers based on IMEI numbers. Therefore, the active participation of the petitioner along with the first accused is evident from all those materials and hence, her custodial interrogation is very much required in this case.



15. The present case has been registered with the a. on that the first accused was found in possession of Ganja weighing 42 kgs in his Toyota Fortuner car bearing Registration No. TN-65-AE-6565. The car was affixed with the Advocate symbol and it was used for transporting the contraband.

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16. The learned Additional Public Prosecutor also produced the record which shows that the petitioner used to pledge the jewels and remitted the said amount to the credit of one Shaik Lathibee, Andhra Pradesh. The statement recorded from the pawn shop owner was also produced before this Court and revealed that the petitioner used to pledge the jewels frequently and the same was immediately redeemed by her. Within a short span of time, namely from 17.03.2021 to 14.04.2023, she pledged so many jewels for a huge loan amount. All the jewels were immediately redeemed by her. On the date of pledging the jewels, there were deposits in favour of Shaik Lathibee from Andhra Pradesh. He also produced call details and CDR details consisting of the calls from the petitioner. The receipts of the jewel pledged by the petitioner were also produced before this Court. Therefore, there are sufficient materials produced before this Court to corroborate the confession statement of the first accused to implicate the petitioner as an accused. Further, the petitioner was also conscious and constructive possession of contraband weighing 42 kgs of Ganja along with the first accused, which is a commercial quantity. Therefore, the custodial interrogation of the petitioner is very much required in this case. Hence, this Court is not inclined to grant anticipatory bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

sd/-

20/06/2023

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/06/2023

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

PS

TO

1 THE INSPECTOR OF POLICE, THIRUPALAI POLICE STATION, MADURAI.

2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL OP(MD) No.9842 of 2023

Date :20/06/2023

RS/VR/SAR-(23.06.2023) 9P 3C