



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

Date : 08.06.2023

PRESENT

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

CRL OP(MD)No.9397 of 2023

Baskara Sethupathi

... Petitioner/Accused No.1

Vs

State represented by
The Inspector of Police,
Mudukulathur PS
Ramanathapuram District.
Cr.No.624/2020

... Respondent/Complainant

For Petitioner : Mr.NA.Manimaran
Advocate.

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

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

PRAYER :-

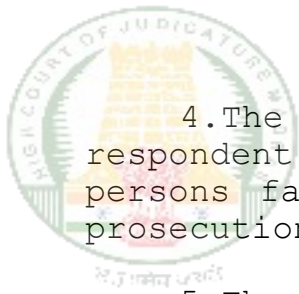
For Bail in Crime No.624 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A1, who was arrested and remanded to judicial custody on 08.12.2020 for the offence under sections 8(c) r/w 20(b) (ii)(C), 25, 29(1), 20, 30 of NDPS Act in Crime No.624 of 2020 on the file of the respondent police seeks bail.

2.The case of the prosecution is that on secret information, the respondent police on 08.12.2020, at about 8:00 am., conducted vehicle check up near Selvanayagapuram vilaku road. At that time, the petitioner was found in illegal possession of 2.8 kgs of ganja. Hence the case.

3.Heard both sides and perused the materials available on record including the First Information Report.



4.The learned Additional Public Prosecutor appearing as respondent would submit that one way or another, the other accused persons failed to appear before the trial Court and as such, the prosecution is not able to begin the trial and it is pending.

5.Though the petitioner was found in possession of 2.8 kgs of ganja and it is commercial quantity, the respondent filed final report and the same has been taken cognizance in C.C.No.29 of 2021, till today trial has not been commenced and the petitioner is in prison from his date of arrest i.e., 08.12.2020. There are totally 8 accused in this case, in which, the petitioner is arrayed as A1. A2 to A8 were arrested and released on default bail. However, the petitioner failed to make an application in time and as such, he is in prison for nearly three years.

6.In this regard, the Hon'ble Supreme Court of India held in a case of **Mohd Muslim @ Hussain Vs. State (NCT OF DELHI)** reported in **2023 LiveLaw (SC) 260** that if trials are not concluded in time, the injustice wreaked on the individual is immeasurable. The relevant portions are extracted hereunder:

19.A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20.The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satinder Kumar Antil supra*). Having regard to these



factors the court is of the opinion that in the fact this case, the appellant deserves to be enlarged on bail.

21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

7. In the case on hand, the petitioner is in prison from his date of arrest ie., 08.12.2020 and trial has not been commenced so far. Therefore, considering the long duration of incarceration of the petitioner, 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.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Principal Special Court for EC & NDPS Act Cases, Pudukottai 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 trial Court on all working days morning at 10.30 A.M., and evening at 05.00 P.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 [SCW 5560]. [R

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

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sd/-
08/06/2023

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

GNS

TO

- 1.The Principal Special Court
for EC & NDPS Act Cases,
Pudukottai.
- 2.The Officer In-Charge,
District Jail,
Ramanathapuram.
- 3.The Inspector of Police,
Mudukulathur PS
Ramanathapuram District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER IN
CRL OP (MD) No.9397 of 2023
DATE : 08.06.2023

NA/CG/SAR- /09.06.2023/4P/5C