



CRL OP(MD). No.11198 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 25/07/2023

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP(MD). No.11198 of 2023

Alhad,

... Petitioner/ Accused 3

Vs

The Inspector of Police,
Kodaikanal Police Station,
Dindigul District
(Crime No.54 of 2023).

... Respondent/ Complainant

For Petitioner : M/s.R.SHANKAR GANESH,
Advocate.

For Respondent : Mr.S.RAVI,
Additional Public Prosecutor

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

PRAYER :- For Bail in Crime No.54 of 2023 on the file of the respondent police

ORDER : The Court made the following order :-

The petitioner/ Accused No.3 herein, who was arrested on 12.02.2023 for the alleged offence under Sections 8(c), 20(b)(ii)(B), 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, in Crime No.54 of 2023, on the file of the respondent police, seeks bail.

2.The case of the prosecution in brief:



CRL OP(MD). No.11198 of 2023

WEB COPY

On 12.02.2023 at about 10.00. a.m., the defacto complainant received secret information. At about 10.00 a.m. along with police team and Revenue officials, they were in patrol duty near Kodaikanal Naidupuram Church. At that time three persons were found in suspicious manner. On seeing the police party, they were trying to escape and fled away from that place. They were apprehended and made enquiry. They revealed their name. Also search was made. They were found in possession of ganja, weighing about 1.100 Kg. It was seized through seizure mahazar; Apart from 100 gm. of Mushroom. Thereafter, further process was undertaken as per the Rules. The petitioner was arrested on the spot itself and remanded into judicial custody. Seeking bail, this petition has been filed by the petitioner.

3.The learned counsel for the petitioner would submit that a false case has been foisted upon the petitioner. According to him, he was not at all available in the place of occurrence. At that time, he returned from Palakad to Kodaikanal at about 10.28 p.m. Thereafter, he was taken into custody. So this shows that he is not involved in the above said crime. To show the same, he has also produced the copy of the train tickets, motor vehicle stand receipt, returned tickets, Google map screen shot of the petitioner's location.

4.Therefore, the question, which arises for consideration is, whether these materials are sufficient enough to satisfy the requirement of Section 37 of the NDPS



CRL OP(MD). No.11198 of 2023

Act. 1950
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5. Further, he would also rely upon the Judgment of the Honourable Supreme Court in the case of Mohd Muslim @ Hussain Vs. State (NCT of Delhi) reported in 2023 Live Law (SC) 260, for the purpose of argument that the prolonged incarceration may be taken into account for the purpose of enlarging the accused on bail.

6. Per contra, the learned Additional Public Prosecutor would submit that the Mushroom that was recovered from this petitioner must be construed only as commercial quantity. The entire contraband must be measured and there is no question of supporting neutral substances.

7. Simultaneously, we also taken into account the earlier application that was filed by the petitioner, that came to be dismissed, after considering all these aspects. With regard to these ground in CrI.O.P.(MD).Nos.7146 of 2023, it has been observed that the tower location of the petitioner as well as the other ground of train tickets can be taken into account only at the time of trial and that cannot be undertaken during the course of hearing bail application here. So the petitioner is not permitted to raise the above said ground here, simply, because the roster has been changed. Even though the roster changed, the ground does not change. So, I find no reason to entertain those arguments.



CRL OP(MD). No.11198 of 2023

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8. With regard to the second argument that whether 100 gms. of mushroom will come under the commercial quantity and whether it is psychotropic Substances, this issue came before this Court on several times and the chemical composition of the Mushroom is Psilocybin, which is a Psychotropic substances, under Section 2(7)(d) of NDPS Act. So it is psychotropic substances and there can be no arguments on the preposition of law.

9. Considering the above said fact, the petitioner has not successfully satisfying the twin requirements under Section 37 of the NDPS Act. Therefore, he is not entitled for any discretionary relief from this Court. This petition deserves to be dismissed.

10. Accordingly, this criminal original petition stands dismissed.

sd/-
25/07/2023

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/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TM
TO
1 THE INSPECTOR OF POLICE,
KODAIKANAL POLICE STATION,
DINDIGUL DISTRICT

2 THE OFFICER INCHARGE,
DISTRICT PRISON, DINDIGUL.



CRL OP(MD). No.11198 of 2023

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

+1. CC to M/S.SUBRAMANIAN M K Advocate SR.No.11398

ORDER
IN
CRL OP(MD) No.11198 of 2023
Date :25/07/2023

SA/MR/SAR. /02.08.2023/5P/5C
Madurai Bench of Madras High Court is issuing
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