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

Dated: 10/07/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.OP (MD) No.12071 of 2023

Chalapaka Lokeswara Prasad : Petitioner/A15

Vs.

State rep. by
The Inspector of Police,
Dhakikombu Police Station,
Dindigul District.
(In Crime No.224 of 2022)

: Respondent/Complainant

For Petitioner : Mr.Y.Athiveerapandian,
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.224 of 2023 on the file of the Respondent Police.

ORDER: The Court made the following order:-

The petitioner/A15, 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) and 25 of the NDPS Act, in Crime No.224 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution in brief:-

(i) On 28/07/2022 at about 01.00 pm, on secret information received from the Police Informer and after recording the information in Case Diary, the de-facto complainant along with the Police Team, went near the EB Colony Crematorium ground. At that time, they found 4 persons making some packets. When they were enquired, they revealed their names as Vairavan(A1), Muthukaruppan (A2), Sundarapandi (A3) and Naveen (A4).



(ii) On further enquiry, they revealed that they used to purchase Ganja from Andhra Pradesh and selling the same by making packets. Further process were undertaken as per the procedure. On further search, they were found in possession of 34 kgs of Ganja. They also informed that they purchased the Ganja from one Murugan/A9. Through the above said Murugan, Arjunan/A8 and other accused persons were known to them. They also revealed that A8 and A9 used to visit Andhra Pradesh and purchase Ganja in bulk and they will distribute the same to them for the purpose of selling. A1 to A4 were arrested on the spot and on the basis of the statements recorded, a case was registered in Crime No.224 of 2022.

(iii) Pending investigating, the involvement of the petitioner came to light and he was implicated and remanded to custody, on 04/08/2022 and ever-since from his arrest, he is in custody. The final report was also filed before the trial court.

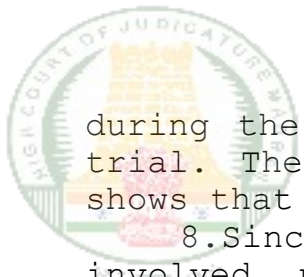
3. The learned counsel appearing for the petitioner would submit that absolutely, no material has been collected during the course of investigation to connect this petitioner with the above said offence; As per the case of the prosecution, Ganja has been recovered from the possession of A1; The petitioner is doing real estate business and not having any bad antecedent either of similar offence or of any other offences; More than 300 days, he is in custody.

4. The learned counsel for the petitioner would further submit that even the whatsapp details, which were collected during the course of investigation, are not admissible in evidence and without any basic materials, he has been wrongly implicated in the offence. In support of his contention, he would rely upon the following judgments viz., (1) Bharat Chaudhary Vs. Union of India (2021 SCC OnLine SC 1235); (2) Aryan Shah Rukh Khan Vs. Union of India and another (2021 SCC OnLine Bom 4127); and (3) Yash Jayeshbhai Champakial Shah Vs. State of Gujarat (2022 SCC OnLine Guj 271) for the purpose of argument that whatsapp messages cannot be taken into account for the purpose of showing, either any live link between the petitioner and the co-accused. Apart from that, it was also contended on behalf of the petitioner that section 57 of the NDPS Act has been violated.

5. The learned Additional Public Prosecutor would submit that during the course of investigation, it is revealed that this petitioner has involved in large-scale selling of Ganja. From him only, the other accused persons purchased Ganja from Andhra Pradesh and for the purpose of selling, transporting the same to Tamil Nadu.

6. Heard both sides and perused the materials available on record.

7. It is seen from the records that to show the involvement of the petitioner, there were whatsapp chats made by this petitioner with the co-accused. The evidentiary value of collecting materials,



during the course of investigation, can be tested only during the trial. The photograph that was submitted by the prosecution also shows that the petitioner was making video chat with the co-accused.

8. Since in this case, large scale contraband ie., 34 kgs is involved, unless the petitioner is able to satisfy the requirement under section 37 of NDPS Act, he is not entitled for bail.

9. This is the third application. The first application was dismissed, on 03/11/2022 and the second application, on 21/01/2023. Reading of the above said orders shows that elaborate discussion was made with regard to the contact of the petitioner with the co-accused. Finding that no ground was available to the petitioner to satisfy the requirement under section 37 of the NDPS Act, that applications were dismissed. Now this third petition is filed on the ground of change of circumstances that except the whatsapp chatting, no other materials have been collected against the petitioner.

10. The learned Additional Public Prosecutor would submit that the petitioner is habitually involved in illegal smuggling of the contraband. He would also submit that the petitioner is also involved in similar offences on the file of the Ramanathapuram Town Police Station and the above said case is pending before the Special Court, Pudukottai. So, this fact has also been verified by going through the CD file.

11. On going through the CD file, this court is completely not in a position to accept the argument that has been advanced by the learned counsel for the petitioner. So when the illegal smuggling of contraband has taken place and huge quantity is involved in the interstate smuggling, I am of the considered view that if the petitioner is released on bail, he may again involve in similar offence. There is no guarantee that he will not repeat or commit the similar offence. The conduct of the petitioner does not indicate any good behaviour. So, as stated earlier, the petitioner has not successfully satisfied the required of law under section 37 of the NDPS Act.

12. Apart from that, it has been brought to the notice of this court that in CrI.OP(MD)No.10737 of 2023, dated 16/06/2023, this court directed the trial court to complete the trial within a period of six months from the date of receipt of a copy of this order. The learned Additional Public Prosecutor would also submit that the above said direction will be complied by the prosecution by producing the witnesses. On that ground also, this court is not inclined to grant bail to the petitioner.

13. In the result, this criminal original petition is **dismissed**.

sd/-

10/07/2023

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/07/2023

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



TO

1 THE INSPECTOR OF POLICE
DHADILKOMBU POLICE STATION, DINDIGUL DISTRICT.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

ORDER

IN

CRL OP (MD) No.12071 of 2023

Date :10/07/2023

SS/MMS/19/07/2023/4P/4C