



CRL OP(MD). No.12043 of 2023

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

Date : 20.10.2023

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.12043 of 2023

Parimaladoss @ Doss

... Petitioner/ Accused No.5

Vs

The Inspector of Police,
NIB - CID,
Sivagangai,
Sivagangai District.
Cr.No.12 of 2020

... Respondent/Complainant

For Petitioner : Mr.V.Kathirvelu
Senior Counsel
Assisted by
Mr.J.Selvam, Advocate

For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor

PRAYER :-

Petition filed under Section 438 of the Criminal Procedure Code seeking anticipatory bail in respect of C.C.No.2 of 2021 on the file of Additional District and Sessions Court, Special Court for EC and NDPS Act Cases, Pudukottai, regarding Crime No.12 of 2020 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner, apprehending arrest from the respondent police in connection



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with the case in Crime No.12 of 2020 for the offence u/s.8(c) r/w 20(b)(ii)(c), 29(1) & 25 of NDPS Act, has filed this petition seeking anticipatory bail.

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2.The petitioner is the fifth accused in the case in Crime No.12 of 2020. The case is now charge sheeted and pending before the Special Court for EC and NDPS Act Cases, Pudukottai, in C.C.No.2 of 2021.

3.The case of the prosecution is that on 22.06.2020 at about 04.30 pm, the respondent Police, on information, has searched a car bearing Reg.No.TN-22-CH-4986 and found 72 parcels of Ganja, each weighing 2 kgs. After completing the material requirements, the Police seized 144 kgs of Ganja from the third accused. On the confession statement of the third accused, the other accused have been added in this case. The allegation made as against this petitioner is that he is a friend of the third accused and this petitioner has financed a sum of Rs.1,00,000/- to procure the contraband from Andhra Pradesh.

4.This is the fourth application filed by the petitioner for anticipatory bail. Considering the nature of allegation made as against this petitioner, the previous applications filed by him were dismissed.



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5.This application is filed by the petitioner on the change in circumstances that the sixth accused, who is also similarly placed as that of the petitioner, was granted with anticipatory bail by this Court in CrI.OP(MD)No.4270 of 2022, dated 07.04.2022. By referring this order and the decision of the Hon'ble Supreme Court in *Tofan Singh v. State of Tamil Nadu* [2021 (4) SCC 1], learned Senior Counsel appearing for the petitioner submitted that there is no other material as against this petitioner, excepting the alleged confession statement of the co-accused and therefore, he prayed for anticipatory bail to the petitioner.

6.Learned Additional Public Prosecutor appearing for the respondent submitted that the petitioner is the main accused, who has financed money for the procurement of Ganja from Andhra Pradesh. He has abetted the commission of offence and it attracts Section 29(1) of the NDPS Act. He further submitted that the petitioner is absconding from the month of June, 2020 and in view of his absence, the trial is also pending for the past two years.

7.This Court considered the rival submissions made on either side and perused the available materials.



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8.The petitioner is the fifth accused in Crime No.12 of 2020, which is now pending in C.C.No.2 of 2021 before the Special Court for EC and NDPS Act Cases, Pudukottai. The respondent Police have recovered 144 kgs of Ganja from the third accused. The prosecution case is that this petitioner is a friend of the third accused and he has sponsored a sum of Rs.1,00,000/- for procuring the contraband.

9.Admittedly, the respondent Police has not collected any other material as against the petitioner, excepting the confession statement of the third accused. This Court has also considered the case of the sixth accused for anticipatory bail that there was no recovery from him, there is no material excepting the confession statement of the co-accused and also his antecedents.

10.The Hon'ble Supreme Court in *Tofan Singh's* case (supra) has held that a confession statement recorded u/s.67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. By referring the same, the learned Senior Counsel prayed for the relief of anticipatory bail. However, in a subsequent decision in *State of Haryana v. Samarath Kumar* [2022 LiveLaw (SC) 622], the Hon'ble Supreme Court has held that the accused can take advantage of the decision in



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Tofan Singh's case (supra) at the time of regular bail or at the time of final hearing of the trial and not at the stage of anticipatory bail. The relevant paragraph is extracted as under:-

"8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents."

In view of the above position and considering the submissions of the learned Additional Public Prosecutor that though the case was charge sheeted in the year 2021, the trial is still pending since the petitioner is absconding, this Court is not inclined to grant anticipatory bail to the petitioner. Accordingly, this criminal original petitions is dismissed.

sd/-
20/10/2023

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/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

- 1 THE INSPECTOR OF POLICE
NIB-CID, SIVAGANGAI, SIVAGANGAI DISTRICT.
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN

CRL OP(MD) No.12043 of 2023
Date :20/10/2023

SS/VRS/SAR- /20/10/2023/6P/3C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023