



Crl.OP(MD)No.12758 and 12759 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 14/07/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.12758 and 12759 of 2023

Vijayendren

.... Petitioner/ Accused No.2
in Crl.OP(MD)No.12758

G.Hariharan

.... Petitioner/ Accused No.1
in Crl.OP(MD)No.12759

Vs.

The State by
The Inspector of Police,
Koodal Pudur Police Station,
Madurai.
In Crime No.89 of 2023

... Respondent/ Complainant
in both petitions

For Petitioner : Mr.A.Raja, Advocate
(in both cases)

For Respondent : Mr.B.Nambiselvan
(in both cases) Additional Public Prosecutor

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

COMMON PRAYER:-

For Bail in Crime No.89 of 2023 on the file of the Respondent Police.

COMMON ORDER: The Court made the following order:-



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The petitioners, who arrayed as A1 and A2 were arrested, on 24/01/2023 and remanded to judicial custody for the offences punishable under sections 8(c), 20(b) (ii)(c), 25, 29(1), 25(1)(a) of Narcotic and Substances Act, in Crime No.89 of 2023 on the file of the respondent police, seek bail.

2.The case of the prosecution is that on 24/01/2022 at about 13.45 hours, based on the secret information received by the Sub Inspector of Police, the respondent police went near the Railway Track on the back side of Central Railway Goods-shed, Koodal Nagar, Madurai. At that time, the accused persons coming in a two wheeler bearing registration No.TN-59-AU-2478. On seeing the police party, all the accused persons tried to run away from that place. The respondent police nabbed the accused persons and enquired them and found that they were in possession of 21 kgs of ganja. The contraband was seized by the respondent police and the sample has also been taken as per the procedure.

3.The earlier petition that was filed by the petitioners came to be dismissed by this court, dated 09/06/2023 in Crl.OP(MD)No.10107 of 2023 stating that the twin conditions under sections 37 of the NDPS Act has not been complied. Now this petition has been filed stating that they are in custody from 25/01/2023. A1 was arrested on 23/01/2023 in an another murder case of Vellaimani @ Mani. He was brutally assaulted and illegally detained and his left leg was also broken by the



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police, on 23/01/2023 itself and his brother namely Vijay sent complaint to various authorities. The above said Vijay was also implicated in another case. Fearing that this petitioner and the above said Vijay will give police complaint, this false complaint has been filed. Even at the time of remand, this petitioner disclosed all the facts.

4.Heard both sides.

5.FIR reads that in the place of occurrence itself, both the accused have been arrested along with the contraband and remanded to judicial custody. Now their plea is that they are in custody from 23/01/2023 in another murder case and wrongly roped in this case, is a matter for consideration during the course of investigation. With regard to the alleged assault, the petitioners can take appropriate legal action, if it is true.

6.The learned counsel appearing for the petitioners would submit that the case of the prosecution is that as mentioned in the FIR, is improbable and unreliable and not answering to the reason and logic. He would submit that even as per the case of the prosecution, both the accused got fracture on the left leg. If they really wanted to escape from that place, they would not fled away from that place along with the two wheeler and ganja. But the contention that they tried to escape, in the above said process of running hitting down and got injury is highly improbable. The



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improbability can be taken into account only during the course of investigation and that cannot be a ground for granting bail.

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7.The petitioners relied upon the following judgment in support of his contention namely Shafhi Homammed Vs. State of Himachal Pradesh (Special Leave Petition (Criminal)No.2302 of 2017, dated 03/04/2018. He would further submit that section 50 of the NDPS Act has not been complied.

8.No doubt that the above said lapse is found worthy to be considered and taken up at the time of trial. But when serious allegation of possession of contraband that too the commercial quantity, apprehension of arrest in the place of occurrence and the videography showing the recording at the time of recovery, but from this petitioners alone, now it cannot be stated that it is a foisted case. So, I find no reason to differ from the view that has been taken in the earlier occasion in Crl.OP(MD) No.10107 of 2023, dated 09/06/2023.

9.In the result, both criminal original petitions are dismissed.

sd/-
14/07/2023

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



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TO
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- 1 THE INSPECTOR OF POLICE
KODAL PUDUR POLICE STATION,
MADURAI.
- 2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.12758 of 2023
Date :14/07/2023

PKP/BUC/SAR-4 /17.08.2023/ 5P/4C

Madurai Bench of Madras High Court is issuing certified
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