



Crl.OP(MD)No.13249 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 21/07/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.13249 of 2023

Chellakali

... Petitioner/ Accused No.6

Vs.

State rep. by
The Inspector of Police,
NIB CID, Theni.
(In Crime No.30 of 2020)

...Respondent/ Complainant

For Petitioner : Mr.S.Abdul Rahuman,Advocate

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

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

PRAYER:-For Bail in CC No.250 of 2020 on the file of II Additional Special court for Trial of Narcotic Drugs and Psychotropic Substances Act cases, Madurai in connection with Crime No.30 of 2020 on the file of the Respondent Police.

ORDER: The Court made the following order:-

The petitioner/A6, who was arrested and remanded to judicial custody, on 30/07/2020 for the offences punishable under sections 8(c) r/w 20(b)(ii)(C) and 29



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(1) and 25 of the NDPS Act, in Crime No.30 of 2020 on the file of the respondent police, seeks bail.

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2.The case of the prosecution is that on 19.05.2020 at about 11.00 hours, the respondent police had gone to Cumbum Manikatty, Alamara Road at the junction of By Pass Road western side and made a vehicle checkup. At that time, a vehicle bearing Registration No.TN-63-E-1414 was identified by the secret informer. At about 11.15 hours, the police party intercepted the vehicle and found 4 male persons and 3 women in that vehicle, further in that vehicle 6 fertilizer bags were found and on checkup with the consent of the accused, the respondent recovered 180 kg of Ganja at about 13.15 hours and recorded confession statement from A1. At that time, one Chellakali, Jayakumar, Vannakili and Jaya escaped from that place. After complying formalities, A1, A3 and A4 were arrested, on 19.05.2020 at about 17.30 hours and the remaining accused namely A2 and A5 were arrested on the same day. Therefore, the case has been registered in Crime No.733 of 2020 under Sections 8(c) r/w 20(b) (ii) (c) 29(1) & 25 NDPS Act & 269 IPC. Subsequently, the absconded accused Chellakali/A6 & Jaya/A7 were arrested on 02.06.2020.

3.Heard both sides.

4.The facts need not be elaborated, in view of the earlier elaborate discussion that was made by this court in the previous occasion. Only a small point has been



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raised by the petitioner by referring to the order that has been passed by the Honour'ble Supreme Court in the Special Leave to Appeal (Crl.) No.8772 of 2022.

The above said SLP was preferred by the petitioner against the dismissal order passed by this court, on 09/02/2022. The matter was heard, on 07/01/2022 by the Hon'ble Supreme Court and observed that there was no reason to interfere into the order, further directed the trial court to entertain the bail application if trial court could not be completed within a period of six months from the date of the order.

5.Now the learned counsel appearing for the petitioner would submit that the trial could not be completed within the stipulated time fixed by the Hon'ble Supreme Court. So, he moved bail application before the trial court in Crl.MP No.1341 of 2023. It was dismissed on 5th June 2023 stating that the above said order was not brought to the notice of the trial court. Having failed to brought the above said order to the notice of the trial court, after a period of six months, the above said bail application was filed by this petitioner. According to the trial court, it is nothing, but fraud upon the court. Apart from that, it has also stated that out of the 9th accused, warrant is pending against A2 and A8. Now A1, A6, A7and A9 are in custody and A3, A4 and A5 were on bail. The case was split up against A2, now he is absconding. The trial court also observed that it will take effective steps to dispose of the case, within a period of six months and if not, the case will be split up against



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A2, who is the absconding accused and the case will be proceeded.

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6.By pointing out this order, both the petitioner as well as the Additional Public Prosecutor would submit that because of the continuous absence and non cooperation of the accused, it could not be completed and even the learned Special Public Prosecutor appearing for the respondent before the trial court was not put on notice about the Supreme Court order. The trial court has also stated that the petitioner has not satisfied the twin conditions under section 37 of the NDPS Act. It has also mentioned that communication was sent by this court to the Inspector of Police, Cumbum North Police Station and the Additional Public Prosecutor of this Bench, by enclosing the order of the Hon'ble Supreme Court. On this account also, grievance has been expressed by the Additional Public Prosecutor that the respondent is Inspector of Police, NIB-CID, Theni District. But the respondent himself has not received any copy of the order, since, the above said SLP was disposed at the time of admission stage itself.

7.From the narration of facts, it is seen that the petitioner also failed to brought to the notice of trial court about the Supreme Court order. None was properly informed. Because of that the above said mistake by all the parties, the trial could not be completed.

8.Now coming to the facts of the case, even though some of the accused have



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been enlarged on bail, as stated above, totally 180 kgs of Ganja involved in this matter. So, as undertook by the trial court, this will stand dismissed by directing the trial court to split up the case against the accused, who are regularly appearing and dispose the same by following the Supreme Court order. For that purpose, the respondent as well as the petitioner shall cooperate with the trial process. In the meantime, after the examination of PW1, the petitioner can revive bail application.

9.It is unfortunate to note that the judgment of the Hon'ble Supreme Court has not been brought to the notice of trial court. Perusal of the ROC No.44754 of 2022 of this Bench, even shows that copy is not communicated to the trial court.

10.In the result, this criminal original petition is dismissed.

sd/-
21/07/2023

/ TRUE COPY /

/07/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE SPECIAL JUDGE,
FOR EC & NDPS ACT CASES, MADURAI
- 2 THE INSPECTOR OF POLICE
NIB CID, THENI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

<https://www.mhc.tn.gov.in/judis>



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

ORDER
IN
CRL OP(MD) No.13249 of 2023
Date :21/07/2023

PKP/MR/SAR- /29.07.2023/ 6P/ 5C

Madurai Bench of Madras High Court is issuing certified
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