



CRL OP(MD). No.14668 of 2023

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

Reserved on : 10.10.2023

Delivered on : 31.10.2023

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR  
CRL OP(MD). No.14668 of 2023

Leo Rozario Joseph

... Petitioner/ Accused No.2

vs.

The Senior Intelligence Officer,  
Directorate of Revenue Intelligence,  
No.22/14, Celin Garden, Roche Colony,  
South Beach Road,  
Tuticorin – 628 001.  
(F.NO.DRI/CZU/MDU/VIII/48/ENQ-01/  
INT-04/2021)

... Respondent / Complainant

For Petitioner : Mr.M.Purushothaman, Advocate

For Respondent : Mr.C.Arul Vadivel @ Sekar,  
Special Public Prosecutor for DRI Cases.

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

PRAYER : For Bail in C.C.No.315 of 2022 on the file of the Additional District Judge/Presiding Officer/ Principal Special Court for EC & NDPS Court, Madurai.

ORDER : The Court made the following order :-

The petitioner/A.2, who is facing a case for the offences punishable under Sections 8(c) r/w 23(c), 25, 28 and 29 of Narcotic Drugs and Psychotropic Substances



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Act, in C.C.No.315 of 2022 on the file of the learned Additional District Judge/Presiding Officer/ Principal Special Court for EC & NDPS Court, Madurai, in F.No.DRI/CZU/MDU/VIII.48/ENQ/INT-04/2021, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on receipt of specific information that Cocaine weighing around 300 kgs was arriving at Tuticorin Port in the vessel Cotopaxi in container No.CAXU9986891, the above container which arrived at Tuticorin Port on 20.04.2021 was taken up for examination at M/s.DBGT Terminal, that the Bill of Lading No.MEDUPA022615 issued by M/s.Mediterranean Shipping Company S.A., covered six 40' containers, including the above container, declared to contain 'teak round logs', that as per the bill of lading consignee was M/s.Sri Jeyasakthi Timper Traders, No.1/1020, Courtallam Road, Shencottai and the liner/container No.CAXU9986891 was EU19387527 and it tallied with seal number on the above container, that they have found in the container round logs stacked in four rows and after the front row there was a gap of few feet and in the gap nine big travel bags, locked with plastic zip tie, were found lying, that the Surveyor N.Renganathan, surveyed the above container and gave opinion that the container had not been tampered with, that all the nine bags were recovered and all the bags were found to contain rectangular shaped packets wrapped with brown color



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cellophane tape and the packets wrapped with multilayer transparent polythene film, that the officers, on opening the final layer of packing found rectangular shaped bar made of compressed white color powder like substance, that when a small quantity of said powder was tested with the help of Narcotic Drugs Detection Kit, the same tested positive for Cocaine, that all the packets were opened and found to contain bars made of compressed white color powder, that during examination of the contents of the bag A4 an unused yellow color one Time Liner Seal No.EU19387527, which was the same as the one One-Time Liner seal originally found on the above container No.CAXU9986891, was found and recovered, that 302 rectangular shaped bars in 9 bags, totally weighing 303.403 kgs of Cocaine, valued at Rs.2,000/-Crores in international market, were seized and recovered under the provisions of NDPS Act, 1985 r/w Customs Act, 1962 under mahazar proceedings dated 21.04.2021 and that they have also recovered teak round logs used as cover cargo for smuggling of Cocaine measuring 15.8380 CBM.

3. It is the further case of the prosecution that during the course of investigation, they found that the arrival of the above container bearing No.CAXU9986891 at Tuticorin was monitored on 19<sup>th</sup> and 20<sup>th</sup> April 2021 ie., before and during arrival of the said vessel Cotapaxi from a static IP address “182.19.47.241”, which was ascertained to be allotted by M/s.Vodafone Idea Limited



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to M/s.Expo Freight Private Limited, Chennai and that they have also found that a MAC ID "18:B1:69:91:EE:02" was being used for communication through the said IP address.

4. It is their further case that they have ascertained from M/s.Bharti Airtel Limited that the above said container had also been tracked from the IP address 27.62.113.152. mobile No.95000 53502 (Airtel), which pertained to G.Sathish Kumar, an Executive of M/s.Expo Freight Private Limited, Chennai, that the said Sathish Kumar was orally summoned and interrogated and at that time, he gave a statement dated 17.11.2021 under Section 67 of NDPS Act stating that he received a call on 19.04.2021 from the petitioner, who is the Branch Manager of M/s.Expo Freight Private Limited and asked him to track the container bearing No.CAXU9986891, that he tracked the said container in the office computer and intimated the status to the petitioner over phone, that on 20.04.2021 the petitioner called him around 11.00 am and asked him to track the said container and he tracked the container and updated the status, that again the petitioner had contacted him and asked him to track the same container and he tracked again and intimated the same to the petitioner, that again the petitioner had directed him to track the same container and he tracked the same from his mobile phone and took screen shot of the same and shared it through whatsapp to the petitioner and that since he was a subordinate to



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the petitioner, he had followed the orders of his superiors and he was not aware of any other particulars regarding the consignment.

5. It is the further case of the prosecution that thereafter, they have summoned the petitioner and interrogated him, that the petitioner in his statement under Section 67 of the NDPS Act, had admitted that he alone had directed the subordinate Sathish Kumar to track the said consignment, that he had deleted the messages and media files for the dates 19.04.2021 and 20.04.2021, that in the second week of April 2021 he met one Shri.Rashid, who was acquainted to him after a long time, that the said Rashid had directed him to track the consignment, which contains Cocaine and assured him to give good monetary benefits, that he did not know whereabouts of the said Rashid and he has also not known the said phone number of the said Rashid and that thereafter, considering the seriousness and gravity of the offence and based on the grounds of conspiracy established against the petitioner in tracking the container with huge consignment of Narcotic Drugs, the petitioner was arrested on 19<sup>th</sup> November 2021 for contravention of Section 29 of the NDPS Act and he was remanded to judicial custody.

6. It is the further case of the prosecution that after completing the investigation, a complaint arraying the petitioner as second accused, another absconding accused Shri.Rashid as the first accused for an offence under Section 8(c)



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of the NDPS Act has already been filed and the same was taken on file in C.C.No.315 of 2022 and the case is pending on the file of the Principal Special Court for EC and NDPS Act cases, Madurai and that NBW is pending against the first accused.

7. The case of the petitioner is that the petitioner, at the time of arrest, was working as a Deputy General Manager of M/s Expo Freight Pvt. Limited (EFL), which is a multi-national company operating from 19 countries globally and having 19 offices within India itself, that the said company is one of the leading shipping clearing and forwarding agencies, handling thousands and thousands of import and export cargos around the year, that the petitioner was in full control of the operations in South India, after the Director of the company, that he was paid salary and other allowances at Rs.32,00,000/- per annum, that the petitioner hails from a respectable family, that his wife is working as a teacher in Good Shepherd Convent, Chennai and is having two children, his son has completed his schooling and his daughter is a high school going girl and both of them needs his care, protection and guidance, that the petitioner has to take care of his 80 years old aged father and 75 years old aged mother, who are suffering with age hold ailments and that the petitioner's family is economically ruined because of his continuous incarceration.

8. It is the further case of the petitioner that the petitioner has been



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incarcerated more than 600 days since 19.11.2021, that his earlier Counsel's junior met him twice in the jail for 5 minutes each for getting his signatures in the papers, that he was permitted to talk with his wife over prison phone thrice in short periods, that when they have engaged the present Counsel, he met him in the prison twice and they had lengthy interactions and only at that time, he came to know about the stand taken by the prosecution and the orders passed by this Court.

9. It is the further case of the petitioner that he came to know that the complainant / DRI had submitted statements as if given by the petitioner during their custody which are false, that the petitioner has never given any statement to the complainant as if he know one Rashid of Mannadi, Chennai and only based on his alleged confession, they had arrayed the said imaginary character as the first accused, that the petitioner had then sent a detailed retraction statement / affidavit dated 19.07.2023 to the respondent/complainant explaining how all the statements alleged to be recorded under Section 67 of NDPS Act were not given voluntarily.

10. The learned Counsel for the petitioner would submit that the petitioner's earlier two bail petitions, the one filed during the pendency of the investigation in Crl.O.P.(MD)No.7032 of 2022 and the other after the filing of the complaint, in Crl.O.P.(MD)No.1350 of 2023 were ordered to be dismissed, that though the case was taken on file in C.C.No.312 of 2022, on the file of the Principal Subordinate



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Court for EC and NDPS Act cases, Madurai, there was no progress at all, as NBW is pending against the imaginary character ie., the first accused, that the petitioner has now sent his detailed retraction statement to the respondent/complainant, that the confession statement alleged to have been given by the petitioner, even if it is true, is inadmissible in evidence and that except the alleged confession statement, the prosecution has not produced any iota of materials to connect the petitioner with the case on hand.

11. The learned Counsel for the petitioner would that the petitioner has not given any confession statement as alleged by the prosecution, that the petitioner has not given any statement about the alleged contact with one Rashid, that the prosecution under the guise of the alleged confession, has created the imaginary character and added him as the first accused and that the prosecution has miserably failed to produce any material to link the petitioner with the first accused – Rashid. He would further submit that the petitioner after coming to know about the alleged statement recorded from him, immediately had sent a retraction statement to the respondent/complainant and as such, the statement alleged to have been given by the petitioner cannot be looked into for any purpose.

12. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in State of Tamil Nadu Vs. S.A.Raja reported in (2005)8 SCC 380, wherein the



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Hon'ble Apex Court, taking note of the fact that there was no confession recorded by the Magistrate under Section 164 Cr.P.C., and that it was the statement of one of the accused given to the police during the course of investigation, has observed that they failed to understand why the accused is anxious to retract the statement made to the police officer which evidently cannot be used against him and the relevant passage is extracted hereunder:

“In fact, there was no retracted confession as alleged by the present respondent before the learned Magistrate. It is true that one of the accused who had implicated the present respondent made an attempt to retract the confession. There was no confession recorded by the Magistrate under Section 164 of the Cr. P.C. and it seems that one of the accused had given some statement to the police during the course of the investigation. We are told that that witness had filed an application before the court that his statement should again be recorded by the police. We fail to understand why that accused is anxious to retract the statement made to the police officer which evidently cannot be used against him. The accused must have been trying to protect somebody by making contradictory statements before the police. In the impugned order, it is also mentioned that the respondent herein was suffering



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from some illness and he was a heart patient and needs effective treatment from an efficient doctor. All these facts must have been stated by the respondent in his previous applications. When there was no change of circumstances, the learned Judge may not have granted bail to the respondent.”

13. In the case on hand also, it is not the case of the petitioner that the statement was recorded by the learned Magistrate from him and hence, he was retracting the same. Even according to the petitioner's side, the statement alleged to have been recorded from him is not admissible and cannot be used for any purpose against him, and if that be so, this Court is at loss to understand as to why and for what purpose he sent a retraction statement and that too, to the respondent/complainant.

14. The learned Special Public Prosecutor appearing for the respondent would submit that the petitioner had directed his subordinate staff Sathish Kumar to track the consignment and in pursuance of the directions of the petitioner alone, the said Sathish Kumar had tracked the consignment and gave the particulars, that the petitioner was fully aware of the contents of the container and that he had agreed to track the container and passed on the results to the persons directly involved in smuggling for monetary benefit.



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15. The learned Counsel for the petitioner would submit that tracking containers is a normal activity for any forwarding agent and tracking of containers can be done even by a total stranger and it is as simple as the India Posts tracking website, that the petitioner being the South India head, used to get so many calls from so many people and that many outsiders used to contact them to get information about the movement of containers and they usually track containers so that the person seeking information would be a potential source of business to them as a shipping forward company.

16. The learned Special Public Prosecutor would submit that one Shri.G.Sathish Kumar, DGM, Customs Brokerage (India) of the petitioner's ex-company M/s Expo Freight Ltd., (EFL), has given a statement that the container No.CAXU9986891 was not at all associated with any of their clients, that they did not have any client or contact person of their client by name Rashid, that their ex-employee – the petitioner herein under his personal capacity had instructed their ex-employee Sathish Kumar over phone to track the said container imported vide bill of lading No.MEDUPA022615, which was not associated with their clients and that their company M/s EFL had no part in the tracking of container No.CAXU9986891.

17. The learned Special Public Prosecutor would further submit that the staff



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Sathish Kumar in his statement has specifically stated that on 19.04.2021, he received a call from the petitioner and he gave the container No.CAXU9986891 over phone and asked him to track the same, that he tracked the said container in the office computer, which is assigned to him and intimated the status to the petitioner after 5 minutes, that since he was regularly following the shipments done by the EFL, he was aware that the said shipment does not belong to their company, that on 20.04.2021, the petitioner again called him around 11.00a.m., and asked him to track the same container, that he tracked by using office computer and updated the status of it to the petitioner after some time, that at about 16.30 hours on the same day, the petitioner called him again and asked him to track the same container and he tracked it again and intimated to the petitioner directly, that he left the office around 18.00, that subsequently the petitioner gave him a missed call and at about 20.00 he called him back and he was asked to track the same container, that he tracked the same from his mobile phone and took screen shot of the same and shared it through whats app to the petitioner.

18. The learned Special Public Prosecutor would submit that the said Sathish Kumar has also given a statement that he has not tracked any container that is not related to their company and the petitioner has not asked him to track any other container that is not relevant to their company except the above container



No.CAXU9986891.

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19. I have perused the copy of the complaint and copies of the statement recorded from the witnesses and the other documents.

20. The learned Special Public Prosecutor by referring to the above statements, would submit that the contention of the petitioner's side that they used to track the containers for outsiders also as the tracking of container is the normal activity of any forwarding agent, is patently false.

21. As rightly contended by the learned Special Public Prosecutor, it is pertinent to note that as per the reports of the respondent, though there were totally 6 containers in the particular Bill of lading, that the petitioner had tracked the particular container viz., CAXU9986891, and he has not offered any reason or explanation for the same. Moreover, the petitioner has also not offered any reason or explanation for the alleged deletion of whatsapp messages and the other information relating to the tracking of container. The learned Special Public Prosecutor would submit that though the petitioner in his earlier statement, had specifically denied that he had directed the staff member Sathish Kumar to track the movements of the container No. CAXU9986891, when he was confronted with the statement of the said Sathish Kumar, he had admitted that the tracking details of the said container was sent to him through whatsapp by the said Sathish Kumar and



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that on 19.04.2021 and 20.04.2021, when the movement of the specific container was tracked and that the same would clearly expose the role of the petitioner in the conspiracy.

22. The learned Counsel for the petitioner would submit that the only material available for conspiracy is the statement of the petitioner recorded under Section 67 of NDPS Act, but the said statement is inadmissible as per the judgment of the Hon'ble Supreme Court in Tofan Singh Vs. The State of Tamil Nadu reported in 2021 4 SCC 1 and that therefore, there is absolutely no iota of evidence to point out the guilt of the petitioner.

23. But as rightly pointed out by the learned Special Public Prosecutor, the above aspects have already been rejected and the relevant portion of the earlier order is extracted hereunder for better appreciation:

“20. When a similar plea was raised before this Court in batch of cases in Crl.O.P.(MD)No.5093 of 2021 etc., in Muruganandham and another vs. the State represented by the Inspector of Police, Authoor Police Station, Thoothukudi District and others, dated 23.12.2021, this Court has observed as follows:-

“8. A learned Single Judge of this Court in Kumar @

Ranjithkumar Vs.State reported in 2019 (2) MWN (Cr.) 242, after



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referring to the decisions of the Hon'ble Supreme Court has observed thus:

“12. A careful reading of the above judgments makes it very clear that a confession can be made admissible in evidence under Section 67 of the Act as a substantive evidence as against the maker of the statement. But, in respect of the co-accused, the said statement can never be treated as a substantive evidence. At the most, it can be considered as a relevant evidence under Section 30 of the Indian Evidence Act. On the touch stone of the law laid down by the Hon'ble Supreme Court, the confession of the co-accused can, at the best, be used or utilized in order to lend assurance to the Court. In the absence of a substantive evidence, the Court cannot proceed to convict the accused, purely on the statement of co-accused. In the instant case, the investigation has been completed and a final report has also been filed and the only material that is



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available against the petitioners is the statement of the co-accused and there is no other material. Under such circumstances, this Court is able to satisfy itself that there are reasonable grounds for believing that the petitioners are not guilty of the offence. That apart, there is no material to show that the petitioners will commit any offence, while on bail. 13. Therefore, this Court is satisfied that the petitioners have fulfilled the twin requirements of Section 37 of the NDPS Act and are therefore, entitled to be granted bail. ...”

....

12. No doubt, the learned Additional Public Prosecutor has relied on the decision of another learned Single Judge of this Court in Udhayavan Vs. State represented by the Inspector of Police, NIB CID, Madurai District, in Crl.OP(MD)No.15211 of 2020, dated 30.04.2021, while dismissing the bail application, has held as follows:



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“34. The aforesaid pronouncement of the High Courts and the Hon'ble Supreme Court makes it clear that,

1.the issue relating to compliance of mandatory procedures under the NDPS Act can be gone into only in the trial and not at the stage of considering the bail.

2.If the confessional statement of the co-accused is relevant under section 27 of Indian Evidence Act for the discovery of fact, which led to the implication of the co-accused.

3.Section 35 permits the court to presume the existence of culpable mental state and it is for the accused to prove that he had no such mental state.

4.Section 54 makes it imperative for the accused to account for the possession of any narcotic drug or psychotropic substance or controlled substance ..... otherwise it can be presumed that the accused has committed an offence relating to the things aforesaid.”

13. As already pointed out, the main contention of the



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prosecution is that the confession statement recorded under Section 67 of NDPS Act is admissible in evidence, or not ; is a matter to be gone into and decided at the trial, that since the statement of the co-accused discloses the involvement of the other accused, the confession statement cannot be rejected or discarded while deciding the bail petition and that the case of the prosecution cannot be disbelieved at this point of time.

14. As already pointed out, the Hon'ble Apex Court has specifically held that the Officers, who are invested with powers under Section 53 of NDPS Act are to be considered as Police Officers, as referred in Section 25 of the Indian Evidence Act.

15. Section 25 of the Indian Evidence Act contemplates that no confession made to a Police Officer shall be proved as against a person accused of any offence. The very object of Section 25 is to ensure that the person accused of offence would not be induced by threat, coercion or force to make a confessional statement and the Police Officer is to make every effort to collect or gather the evidence with regard to the commission of offence, but not the confession while the accused is under custody.



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16. It is settled law that statements made by an accused before Police Officer, which amount to confessional statement is clearly barred under Section 25 of the Indian Evidence Act and the only exception is under Section 27 of the Indian Evidence Act, which provides that any portion of the information in the confession statement, which leads to discovery of any new fact or thing can be proved.”

24. At this juncture, it is necessary to refer the judgments relied on by the learned Counsel for the petitioner:

1. Mohd.Muslim alias Hussain Vs. State (NCT of Delhi) (2023 SCC Online SC 352):

“20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application



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is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*<sup>19</sup>). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil supra*). Having 19 (2009) 2 SCC 624 regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

2. *Sebil Elanjimpally Vs. State of Odisha* ( 2023 SCC Online SC 677):

"The impugned order shows that what has weighed with the Court is the fact that the co-accused who was released on bail has not



surrendered. It is this factor alone which we can discern to be the reason to not entertain the bail application. After hearing learned counsel for the parties, we are of the view that the fact that the co-accused who was released on bail has not surrendered cannot be a germane factor to decline bail to the co-accused, namely, the appellant.”

3. Rabi Prakash Vs. the State of Odisha ( 2023 Livelaw (SC)533):

“3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time. 4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1 st condition stands complied with. So far as the 2 nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)



(b)(ii) of the NDPS Act.”

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25. In the first decision referred above, the accused therein was arrested when he was 23 years old and he has already suffered incarceration over 7 years. The Hon'ble Apex Court, by observing that grant of bail on the ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act given the imperative of Section 436A which is applicable to offences under the NDPS Act too, has granted bail.

26. In the second decision above referred, the Hon'ble Apex Court not accepting the refusal to grant bail on the ground that the co-accused who was already released on bail has not surrendered, has set aside the impugned order and directed the High Court to take up the application and dispose of the same.

27. In the third decision above referred, taking note of the custody of the accused for more than 3 ½ years, the Hon'ble Apex Court by observing that the prolonged incarceration militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and that the conditional liberty must override the statutory embargo created under Section 37 of the NDPS Act, has granted bail.

28. In the case on hand, as already pointed out, the petitioner was arrested on 19.11.2021 and is in custody for the past 23 months.



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29. The learned Special Public Prosecutor has relied on the judgment of the Hon'ble Supreme Court in Narcotics Control Bureau Vs. Mohit Aggarwal reported in 2022 LiveLaw (SC) 613, wherein the Hon'ble Apex Court has observed as follows:

“18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

30. It is settled legal position that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative and this Court in its earlier order, has specifically observed,

“23.It is settled law that the twin conditions contemplated under Section 37 of NDPS Act are to be considered as conjunctive and not alternative. It is not the case of the prosecution that the petitioner is having any previous case under the NDPS Act. Hence, the Court can very well



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record a finding that the petitioner is not likely to commit any such offence, after coming out on bail. But at the same time, considering the nexus between the petitioner and said Rashid and the directions issued by the petitioner to his staff Sathish Kumar to track the particular container, though there were six containers in the particular bill of lading in imports and also taking note of the deletion of media files by the petitioner sent through whatsapp by his staff Sathish Kumar and also taking note of the huge quantity of the contraband seized and also the fact that the petitioner has not chosen to furnish the particular or the whereabouts of the said Rashid, who alone had directed the petitioner to track the particular consignment for monetary benefits and that the investigation even now is in initial stage as stated by the learned Special Public Prosecutor, this Court can not record a finding that the petitioner is not guilty of such offence, at this point of time.”

31. This Court has already specifically held that the petitioner has failed to satisfy the first condition contemplated under Section 37 of the NDPS Act and the petitioner has not produced any material or change in circumstances to differ from the decision already taken.

32. As already pointed out, the Hon'ble Supreme Court has specifically held



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that the completion of the investigation and filing of the final report, the period of incarceration and even the commencement of trial, cannot be considered as a change in circumstances so as to enable the petitioner to claim bail. In the case on hand, as already pointed out, the contentions of the petitioner's side is that the petitioner has already retracted his statement, that though the case was taken on file, there is no progress as NBW is pending against the first accused and that the petitioner is in custody for more than 600 days, as per the dictum laid down by the Hon'ble Supreme Court, cannot be considered as change in circumstances.

33. Considering the above, this Court has no hesitation to hold that the petitioner is not entitled to get the relief claimed, but at the same time, taking note of the incarceration period, the respondent police is hereby directed to execute NBW pending against the first accused as early as possible or else, to take necessary steps to split up the case as against the present petitioner.

34. In the result, the Criminal Original Petition is dismissed.

sd/-  
31/10/2023

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

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1. the Additional District Judge/Presiding Officer/  
Principal Special Court for EC & NDPS Court, Madurai.

2.The Senior Intelligence Officer,  
Directorate of Revenue Intelligence,  
No.22/14, Celin Garden, Roche Colony,  
South Beach Road,  
Tuticorin - 628 001.

3.The Superintendent,  
Central Prison, Palayamkottai.

4.The Special Public Prosecutor for DRI Cases,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.KANNAN, Advocate ( SR-15757[I] dated 01/11/2023 )

ORDER

IN

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Date :31/10/2023

ED/VRS/SAR- (15/11/2023) 26P / 6C

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