



Crl.OP(MD)No.15368 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 08/09/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.15368 of 2023

Vinoth @ Vinothpandian

... Petitioner/ Accused 4

Vs.

State rep. by
The Inspector of Police,
K.Pudur Police Station,
Madurai City.
in Crime No.31 of 2022

... Respondent/Complainant

For Petitioner : Mr.M.SUBASH BABU, Senior Counsel
for Mr.M.CHANDRABOSE, 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.31 of 2022 on the file of the Respondent Police.

ORDER: The Court made the following order:-

The petitioner, who was arrested and remanded to judicial custody, on 21/01/2022 for the offences punishable under section 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act 1985, in Crime No.31 of 2022 on the file of the respondent police, in CC No.53 of 2023 on the file of the Principal EC & NDPS Court, Madurai, seeks bail.

2.The case of the prosecution in brief:-

On 21.01.2022 at about 06.30 pm, based on the secret information received by



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the Sub-Inspector of Police, he along with the police party went near V.Grand Hotel, Surveyor Colony, K.Pudur, Madurai Town. At that time, they saw a Nissan Car bearing Reg.No.TN-19-S-8580 coming from east to western side, driven by A1/Rajkumar. It was intercepted and on search, the respondent police found a white colour gunny bag in the back side of the car containing 8kgs of Ganja. On further enquiry, the respondent came to know that A2 namely Jeyakumar usually purchased Ganja from Andhra Pradesh for purpose of selling the same in the local area along with A3 to A5. On further investigation, the respondent police found two white colour gunny bags in A1's rented house in T.M.Nagar 4th street, Uthangudi each containing 19 kgs of Ganja.

3.After completing all the procedures contemplated under the NDPS Act, the respondent police seized the contraband totalling 46kgs of Ganja and arrested the accused. During investigation it came to light that all the accused persons actively involved in the drug trafficking. Hence the case.

4.This petitioner along with one Suhail Ahmed filed Crl.OP(MD)No.21413 of 2022 seeking bail. Suhail Ahmed's petition was heard in Crl.OP(MD)No.21903 of 2022 and a common order was passed by this court, on 01/03/2023. After elaborate discussion, the bail applications were dismissed.

5.It was submitted before this court that based upon the confession statement of



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A1, this petitioner was arrayed as an accused. It was also submitted that at that that when he was not involved in the above said offence, one Vinoth, who belongs to Kadachanenthall was involved. Unable to find out the above said Vinoth, he was wrongly implicated. He has worked as a Trainee Professional Service Representative in Burgeon Private Limited and subsequently selected as Territory Business Manger in Ind-Swift Limited Company and he worked in the Company for more than two years. He drawn salary amount of Rs.49,000/- and there was no necessity to him to involve in the above said offence. The quantity of the contraband involved in this case is 46 kgs. The identify of the petitioner was fixed on the basis of the call details. He gave a different story that it was a borrower and lender relationship. Apart from that, the banking transactions also took place between the petitioner and A1 and A4.

6.Para 17 of the above said order can be extracted herein for better understanding of the issue:-

“17.It is the case of the petitioner in Crl.O.P(MD) No.21413 of 2022 that other than borrowed money as loan from A1 and returning the same , there is no connection between them. Initially the petitioner had taken a plea that he is not the real accused and one Kadachanenthall Vinoth is the actual accused and he was falsely implicated in this case on mistaken identity. It



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is the case of the petitioner in Crl.O.P(MD) No.21903 of 2022 that he is not all connected with the offence and that he had raised a plea that his remand itself was illegal and had challenged the same and it had been negated by the Hon'ble Division Bench of this Court and the Hon'ble Apex Court. It is the case of the prosecution that apart from the confession of A1, there are ample materials in the form of CDR report, bank transaction and tower location to connect the petitioners with the crime and they have conspired together and abetted the main accused in the crime of drug trafficking."

7.In the concluding portion, it has been observed as under:-

"21.The allegation against the petitioners is that they abetted the main accused in the crime. The question of abetment and criminal conspiracy cannot be gone into at the time of considering the bail petition. It is too early to consider the question of abetment and criminal conspiracy while considering the bail petition. These aspects have to be considered on the basis of oral and documentary evidence that would be adduced during the trial of the case.



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22.Further it is also the case of the prosecution that based on materials available it could be presumed that existence of culpable mental state with regard to the knowledge of crime.”

8.By pointing out the above said observation, the learned Additional Public Prosecutor would submit that this petitioner is taking different and contradictory stands, which will falsify his defence, since the contraband involved is more than 46 kgs. Since it is a commercial quantity, he is to satisfy the requirement of section 37 of the NDPS Act.

9.But however, the learned Senior Counsel appearing for the petitioner would rely upon the order of the Hon'ble Supreme Court in the case of Suhail Ahmed Vs. State Rep. through the Inspector of Police. That was filed by Suhail Ahmed, who filed Crl.OP(MD)No.21903 of 2023, as mentioned above, before this court. Subsequent to the order passed in Crl.OP(MD)Nos.21413 and 21903 of 2022, another application was filed by him, in Crl.OP(MD)No.5602 of 2023, which was also dismissed by this court on 10/04/2023. Against which, he filed S.L.P (Criminal) No.6668 of 2022 before the Hon'ble Supreme Court. He would rely upon the following observation of the Hon'ble Supreme Court.

“Admittedly, there is no recovery of contraband from the appellant or from his possession. The evidence of the prosecution



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is based on regular telephonic conversations between the appellant and the accused no.1 as well as the transactions between them. The charge-sheet has been filed. We also record that the accused no.1 has been enlarged on bail.

On a query made by this Court, learned counsel appearing for the respondent states that so far, there are no antecedents reported about the appellant.

Hence, in the facts of the case, we direct that the appellant shall be enlarged on bail on such terms and conditions as may be fixed by the Special Court after hearing the respondent. For that purpose, the appellant shall be produced before the Special Court within a period of one week from today.

We, however, make it clear that in the evident it is found that after being enlarged on bail, the trial court is delayed due to non cooperation on the part of the appellant, the liberty granted to the appellant is liable to be withdrawn.

With the aforesaid observations, the Appeal is allowed.

Pending application(s) stands disposed of.

10.By pointing out this order, the learned Senior Counsel appearing for the



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petitioner would submit that the above benefit may be extended to this petitioner also, since he is also standing on the very same footing like that of the above said Suhail Ahmed.

11. Reading of the order that was passed by this court in the above said criminal original petitions shows that this petitioner also standing on the very same footing like that of Suhail Ahmed. No bad antecedent is also reported against this petitioner. So the benefit that was extended to the above said Suhail Ahmed is also available to the petitioner.

12. On that account, this criminal original petition is allowed, of course, on the same terms that have been made by the Hon'ble Supreme Court. Accordingly, the petitioner is ordered to be released on bail on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the EC and NDPS Special Court, Madurai, and on further condition that the petitioner shall appear before the respondent police daily at 10.30 am until further orders.

sd/-
08/09/2023

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08/09/2023
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 JUDGE, EC & NDPS SPECIAL COURT, MADURAI.

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,

K.PUDUR POLICE STATION, MADURAI CITY.

4 THE ADDITIONAL PUBLIC PROSECUTOR,

MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.M.CHANDRA BOSE, Advocate (SR-13408[I] dated 08/09/2023)

ORDER IN

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Date :08/09/2023

SA/SAR. /08.09.2023/8P/6C

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