



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

Date : 19.01.2023

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.18198 of 2022

SAKTHIVEL

... PETITIONER/ACCUSED No.A7

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
MUDUKULATHUR POLICE STATION,
RAMANATHAPURAM DISTRICT.
CR.NO.624/2020

... RESPONDENT/COMPLAINANT

For Petitioner : Mr.P.R.BOOMEERAJAN, Advocate

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

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C.

PRAYER :- For Anticipatory Bail in Crime No. 624 of 2020 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner, who is arrayed as accused No.7 in Crime No.624 of 2020, on the file of the Inspector of Police, Mudukulathur Police Station, Ramanathapuram District, apprehending arrest for the offence under Section 8 (c) r/w 20(b) (ii) (C) 25 and 29(1) of NDPS Act and Section 20 and 30 of the Arms Act, filed this application seeking anticipatory bail.

2.The case of the prosecution is that on 08.12.2020 at about 08.00 a.m, on secret information, when the Inspector of Police and other police were conducting vehicle check up at Selvanayagapuram Vilakku Road, Mudukulathur, they found two persons moving in a suspicious manner and on seeing the police party, they have thrown a parcel in the bush and attempted to escape from the scene of occurrence. The police caught hold of them and found that the parcel contains 2.800 kgs of ganja. Based on his confession statement, one Jeyakumar was arrested, who gave a confession that the petitioner / Sakthivel and one Thavamani used to purchase ganja from Chennai and Madurai Districts and give it to him for sale. He further confessed that on 07.12.2020, they handed over the ganja weighing 26.500 kgs, out of which, he gave 2.800 kgs of ganja to the first accused Baskarasethupathi for sale. The respondent police registered the



case and arrested the accused Nos.1 to 5 and remanded to judicial custody.

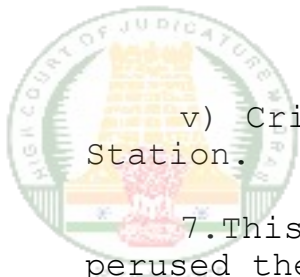
3.The learned counsel appearing for the petitioner submitted that this is the third application and the earlier applications were dismissed by this Court considering the quantity of ganja involved. He further submitted that the final report was already filed and there is no incriminating material as against this petitioner, except the confession statement of the third accused. There is no recovery connecting this petitioner with the crime and there is no bad antecedent as against this petitioner.

4.He has also relied upon the judgment of a Full Bench of the Hon'ble Apex Court, in **Tofan singh Vs State of Tamilnadu**, wherein, it was held that a confession statement under Section 67 of NDPS Act is inadmissible in evidence. He also relied on the recent judgment of Hon'ble Apex Court, in **State by (NCB) Bengaluru v. Pallulabid Ahmed** (Appeal (Crl.) No.242 of 2022), wherein, it was held that confession statement recorded under Section 67 of NDPS Act will remain inadmissible in the trial of an offence under NDPS Act.

5.The learned Additional Public Prosecutor appearing for the respondent police submitted that they arrested the petitioner on 04.11.2022, in connection with the case in Crime No.299 of 2022 on the file of the Sayalkudi Police Station, for the offences punishable under Section 392 IPC and now the petitioner is confined in the District Prison, Ramanathapuram. He further submitted that as per the First Information Report in Crime No.299 of 2022, dated 04.11.2022, the petitioner along with other accused snatched away a gold chain from one Rajalakshmi, who was standing in front of her house at about 6.30 p.m. The villagers chased them, due to which, the petitioner and other accused fell down. The other accused escaped with the jewel and this petitioner was caught by the public and taken to the Hospital and admitted in the Hospital. Thereafter, he was arrested on 06.11.2022 at about 2.00 p.m. He further submitted that the petitioner used a vehicle bearing Registration No.TN 59 BH 5666 Yamaha Motor cycle, which was also a stolen one.

6.According to the learned Additional Public Prosecutor, apart from this case, the petitioner has also involved in the following cases:-

- i) Crime No.128 of 2022, on the file of the Keelathuval Police Station;
- ii) Crime No.138 of 2022, on the file of the Keelathuval Police Station;
- iii) Crime No.295 of 2022, on the file of the Sayalkudi Police Station;
- iv) Crime No.299 of 2022, on the file of the Sayalkudi Police Station; and



v) Crime No.6 of 2022, on the file of the Alagappapuram Police Station.

7.This Court considered the rival submissions made and also perused the materials placed on record.

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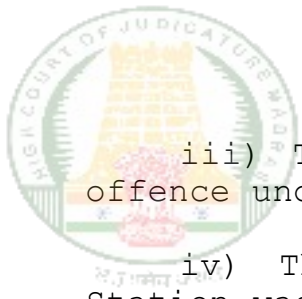
8.The occurrence in this case said to have taken place on 08.12.2020. The respondent police recovered 2.800 kgs of ganja from the first accused, namely, Baskarasethupathi and through his confession statement, they have fixed the accused No.3 that they purchased the contraband from this petitioner and another. Through the confession statement of the third accused, this petitioner and one Thavamani are implicated as accused Nos.7 & 8 that this petitioner and Thavamani are procuring ganja from Chennai and Madurai and handed over the same to one Jayakumar (A3). A quantity of 26.500 kgs of ganja was purchased by A3 from the petitioner on 07.12.2020, out of which, he gave 2.800 kgs of ganja to the first accused for sale. The respondent police has also recovered the remaining ganja from A3 and filed the final report on 28.02.2021.

9.The respondent police neither arrested the petitioner and A8 nor conducted any search in the petitioner's house and / or in the house of Thavamani (A8) to ascertain the truth. It is also to be noted that the respondent police have not collected any other materials such as call details to ascertain whether the accused Jeyakumar is having any contact with this petitioner/A7. As per the prosecution, the petitioner is said to have purchased ganja from Chennai and Madurai and distributed the same through Jayakumar (A3). But, without even ascertaining the person from whom the petitioner and the other accused have procured ganja, they have filed the final report. The petitioner's counsel has also claimed that except the confession statement of A3, there is no other incriminating material as against the petitioner.

10.The learned Additional Public Prosecutor claimed that apart from this case, the petitioner has involved in five other cases.

i) The case in Crime No.128 of 2022 on the file of the Keelathuval Police Station was registered on 18.09.2022 for the offence under Section 379 IPC. This complaint was lodged that a TVS Starcity Motorcycle, which was parked in front of the complainant's house was stolen away. The police recovered the vehicle from one Gunabalaji of Keelathurai.

ii) The case in Crime No.138 of 2022 was registered for the offence under Section 379 IPC on 06.10.2022 that the accused has stolen two goats of the complainant. According to the complainant in this case, the goats were stolen on 22.09.2022. However, the complaint was lodged on 06.10.2022 mentioning the name of the accused and a reference is there as Keelathuval Sakthi. The police arrested one Santhosh S/o Murugan and recovered goats from the bush near the complainant's house. The police recovered the TVS Starcity Motorcycle from him on 06.10.2022 at 2.50 p.m.



iii) The case in Crime No.295 of 2022 is registered for the offence under Section 379 IPC of a missing Yamaha Motorcycle.

iv) The case in Crime No.299 of 2022 of Sayalkudi Police Station was registered for the offence under Section 392 IPC that on 04.11.2022, this petitioner along with another accused snatched away a gold chain from the complainant one Rajalakshmi, while she was standing in front of her house. The villagers caught hold of this petitioner, However, the other accused managed to escape with the chain. This petitioner was sent to the Hospital through 108 ambulance for treating his injury and was shown as arrested on 06.11.2022.

v) The case in Crime No.6 of 2022 is filed on the file of the Alagapurram Police station for the offence under Sections 294 (b), 323, 324 and 506(ii) IPC. Though the doctor, who treated the victim was examined, copy of the Wound Certificate is not available in the CD file.

11.Excepting the case in Crime.No.6 of 2022 on the file of the Alagappapuram Police Station, the other cases were registered between 18.09.2022 and 04.11.2022 when the application filed by the petitioner for anticipatory bail is pending before this Court. The learned Additional Public Prosecutor projected that after the arrest of the petitioner in the chain snatching case in Crime No.299 of 2022 on 06.11.2022, his involvement in the other cases came to light based on his confession statement.

12.This Court is not inclined to accede to the submission made by the learned Additional Public Prosecutor. The fact remains that other than the confession statement, there is no other material connecting this petitioner with the alleged offence. Though it is projected as if the petitioner is the main accused and is responsible for the circulation of ganja, not even a raid was conducted in his place of residence. Without even fixing the source from where the contraband was purchased, the final report has also been filed. The other cases referred to by the respondent police were registered, when this application for anticipatory bail is pending before this Court.

13.For the foregoing reasonings, this Court is inclined to grant anticipatory bail to the petitioner insofar as the present case in Crime No.624 of 2020 is concerned. Accordingly, this petition is allowed and the petitioner is ordered to be released on bail in the event of arrest or his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Additional District and Sessions Judge / Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukottai, on condition that the petitioner shall execute a bond

of Rs.25,000/- (Rupees Twenty Five Thousand only) with two



sureties each for a like sum to the satisfaction of the learned Judge concerned and on further conditions that:-

[a] the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Judge may obtain a copy of their Aadhaar card or bank pass book to ensure their identity;

[b] the petitioner shall report before the respondent police as and when required;

[c] the petitioner shall not tamper with the evidence or witness either during investigation or trial;

[d] the petitioner shall not abscond either during investigation or trial;

[e] on breach of any of the aforesaid conditions, the learned Judge/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner has been released on bail by the learned Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]** and;

[f] if the accused / petitioner thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

19/01/2023

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

GK

TO

1 THE ADDITIONAL DISTRICT & SESSIONS JUDGE / PRESIDING OFFICER,
SPECIAL COURT FOR EC AND NDPS ACT CASES, PUDUKOTTAI.

2 THE INSPECTOR OF POLICE
MUDUKULATHUR POLICE STATION, RAMANATHAPURAM DISTRICT.

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

COPY TO:

THE OFFICER INCHARGE,
DISTRICT PRISON, RAMANATHAPURAM.

+1. CC to M/S.BOOMEERAJAN.P.R. Advocate SR.No.936

ORDER IN

CRL OP(MD) No.18198 of 2022

Date :19/01/2023