



CrI.OP(MD)No.16130 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 19/09/2023

PRESENT

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.OP(MD)No.16130 of 2023

C.Vijayalakshmi

: Petitioner / Accused No.2

Vs.

The State by
The Inspector of Police,
Thiruppalai Police Station,
Madurai.
(In Crime No.81 of 2023)

: Respondent / Complainant

For Petitioner : Mr.C.M.Arumugam, Advocate
for Mr.A.Raja, 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.81 of 2023 on the file of the Respondent Police.



ORDER: The Court made the following order:-

The petitioner/A2, who was arrested and remanded to judicial custody, on 13/07/2023 for the offences punishable under sections 20(b),(ii)(c), 25, 29(1), 25(1)(a) of Narcotic Drugs and Psychotropic Substances Act, in *Crime No.81 of 2023 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on the basis of the secret information, on 12/03/2023 at about 11.30 pm, the Sub Inspector of Police, attached to Thirupallai Police Station went near Kadachanenthal to Omachikulam main road. They intercepted the Car bearing registration No.TN-65-AE-6565, which was driven by A1. On suspicion, search was made and found 45 kgs of Ganja. On further investigation, A2 was implicated in this case. Further process was undertaken as per the rules and procedure. On the basis of the above said occurrence, a case in *Crime No.81 of 2023 was registered for the offences stated above.

3.The facts narrated in Crl.OP(MD)No.9842 of 2023 is extracted hereunder:-

“The petitioner/ Accused No.2, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 8(c), 20(b)(ii)(c), 25, 29(1), 25(1)(a) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.81 of 2023 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that when the Sub-Inspector of Police was on duty in Thirupalai Police Station on 12.03.2023 at about 22.00 hours, the Police had appeared in person and informed that one Mr.Parameswaran, S/o.Arumugam, the first accused herein had been smuggling and transporting Ganja in his Car from Andhrapradesh and selling it to customers. It was further informed that the first accused is likely to transport Ganja in his Toyota Fortuner Car bearing Registration No.TN-65-AE-6565 at midnight on 12.03.2023, near Kadachanenthal-Oomachikulam Road near Fish Shop Junction where the first accused is likely to drive the vehicle with contraband.

3.The Sub-Inspector of Police recorded the information in a separate paper and he also recorded the information in the General Diary. Thereafter, the Sub-Inspector of Police along with other Police Constables started from the Thirupalai Police Station to the place pointed out by the Police Informant namely Kadachanenthal-Oomachikulam Road near Fish Shop Junction and reached the place at about 23.00 hours. They were hiding



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near the place expecting the first accused.

4.As expected, the first accused was found driving the vehicle bearing Registration No.TN-65-AE-6565 towards Kadachanenthal Junction at about 23.30 hours. The Sub-Inspector of Police and the other Police party immediately intercepted the vehicle. On seeing the police, the first accused was trying to escape and the police party managed to secure the first accused. The Sub-Inspector of Police has informed about the right of the accused to be searched in the presence of the Judicial Magistrate in accordance with Section 50 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act). However, the first accused was alleged to have waived his right to be searched as contemplated under Section 50 of the Narcotic Drugs and Psychotropic Substances Act. Hence, the police party proceeded to search the vehicle and found two white colour gunny bags, each containing 21 kgs of Ganja (totally 42 kgs). The contraband was seized by Mahazar and the first accused was arrested by the police by informing the reason for arrest.

5.The first accused had voluntarily given a confession statement without any influence or threat. The confession statement was recorded by the police in the presence of witnesses from 00.30 hours to 02.15 hours and the signature of the accused was obtained in the said statement. He has narrated the entire sequence of events and modus operandi adopted by him in smuggling and transporting the contraband from Visagappattinam, Andhrapradesh. He has also confessed that he used to affix "Advocate Sticker" and "Press Sticker" in all his luxury Cars as per the advice of his wife, the petitioner herein and transport the contraband to various places. In the event of intercepting the vehicle by the police, he would escape from the clutches of police by showing the Advocate Sticker.

6.On the basis of his confession, the first accused was taken to Dindigul and seized a BMW Car bearing Registration No.TN-01-AS-1111 which was parked in Spencer Compound (Car Parking Slot) situated on the Dindigul Scheme Road. The police party recovered 30 kgs of Ganja from the above Car. After taking a sample of 50 grams from the gunny bag, the remaining contraband was packed in the very same gunny bag



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and sealed by the police. They have also recovered a knife from the Car and prepared Mahazar for the above recoveries.

7. Thereafter, the first accused was taken to his dwelling house at Ponnagaram Natham Road, Vijayamadhavan Nagar and conducted a house search. The police party has recovered a sum of Rs.4,30,000/- in cash and other electronic gadgets including Laptop and 12 Mobile Phones. They conducted the search from 07.15 hours and completed the same at 09.15 hours on 13.03.2023. The Sub-Inspector of Police has also prepared Mahazar and signed in the presence of the first accused and the witnesses for having recovered the properties. The first accused and the witnesses have also signed the Mahazar. Thereafter, the first accused was taken to the Thirupalai Police Station and First Information Report was registered against the first accused and the petitioner for the offences stated above."

4. It is not necessary to go into the factual aspects in detail in this matter.

5. In the course of discussion in the above said order, so far as this petitioner is concerned, it was submitted by the learned counsel appearing for the petitioner, which is also extracted in para '8' as under:-

"8. The learned senior counsel appearing for the petitioner submitted that the petitioner after completion of her Graduation in Master of Science, she also completed Law course and obtained a degree in Bachelor of Law in the year 2012. She enrolled as an Advocate in the year 2013 in the Bar Council of Tamil Nadu and Pondicherry and she is practising in and around Madurai District and also before this Court. She fell in love with the first accused and got married in the year 2005. At the time of their marriage, he had been running a Poultry Farm and the same was not successful. Subsequently, he had been doing the business of purchasing cars and selling the same in second-hand. Due to their wedlock, they had two sons. While being so, the first accused was involved in so many cases and he is facing trial. Therefore, the petitioner got separated from him and she is living separately in Madurai. Hence, she is no way connected with the first accused and she was never involved in any crime along with the first accused. The petitioner is being an Advocate used to advise him and even then, the first accused involved in so many cases.



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Therefore, she got separated and she is living separately. Now, in the present case, she has been implicated as an accused only on the confession statement of the first accused. She happens to be the wife of the first accused and except the said relationship, there is no other involvement of the petitioner to implicate herself as an accused. The prosecution also failed to produce any single material except the confession statement of the first accused to connect the petitioner along with the first accused. Therefore, the respondent foisted a false case as against the petitioner with an intention to wreak vengeance as against the first accused. So far, the petitioner has never been involved in any case and it is a first case registered against the petitioner.”

6.In response to the above said argument made by the petitioner, the learned Additional Public Prosecutor has made his submission, which is extracted as under:-

“11.The learned Additional Public Prosecutor appearing for the respondent would submit that there are huge materials available to connect the petitioner along with the first accused except their relationship of husband and wife. During the investigation, they collected call details, bank transactions and CDR report, which revealed that the petitioner was actively involved in drug trafficking along with the first accused. The occurrence took place on 12.03.2023 and the investigation is still under progress. So far, the respondent identified 27 mobile numbers based on SIM cards and also identified 30 mobile numbers based on IMEI numbers. Therefore, the active participation of the petitioner along with the first accused is evident from all those materials and hence, her custodial interrogation is very much required in this case and opposed for granting anticipatory bail to the petitioner.”

7.The learned counsel appearing for the petitioner's submission is also extracted in para '10' as under:-

“10.The learned senior counsel appearing for the petitioner would submit that even according to the prosecution, no recovery was made from the petitioner. In the absence of any recovery from the petitioner, the confession of co-accused implicating the petitioner for abatement cannot be relied on or looked into so far as the petitioner is concerned. Therefore, the provision under Section 37 of the NDPS Act would not attract



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as against the petitioner, since she had been implicated as an accused only on the confession statement recorded under Section 67 of the NDPS Act. Even, a perusal of the confession statement of the first accused revealed that all the allegations are vague and bald and that there is no specific statement to connect the petitioner with the first accused. The cars seized from the first accused are contained in the Advocate sticker. It does not mean that the petitioner owned the said cars. No car stands in the name of the petitioner and all the cars belonged to the first accused, that too, he purchased the same for resale. Therefore, under no stretch of the imagination, it can be said to be an abetment under Section 29(1) of the NDPS Act. Except the relationship between the first accused and the petitioner as husband and wife, she cannot be saddled with the criminal liability of abetment. Therefore, on the basis of the bald and vague allegation, the petitioner cannot be implicated as an accused in the absence of any specific allegation and any iota of material evidence. Therefore, he prayed for anticipatory bail to the petitioner.”

8. In the concluding portion, the following observation is made:-

“14. Though the petitioner has been implicated as an accused on the confession statement recorded from the first accused, there are huge materials available to connect the petitioner along with the first accused except their relationship of husband and wife. During the investigation, the respondent collected call details, bank transactions and CDR report, which revealed that the petitioner was actively involved in drug trafficking along with the first accused. The occurrence took place on 12.03.2023 and the investigation is still under progress. So far the respondent identified 27 mobile numbers based on SIM cards and also identified 30 mobile numbers based on IMEI numbers. Therefore, the active participation of the petitioner along with the first accused is evident from all those materials and hence, her custodial interrogation is very much required in this case.

15. The present case has been registered with the allegation that the first accused was found in possession of Ganja weighing 42 kgs in his Toyota Fortuner car bearing



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Registration No.TN-65-AE-6565. The car was affixed with the Advocate symbol and it was used for transporting the contraband.

16.The learned Additional Public Prosecutor also produced the record which shows that the petitioner used to pledge the jewels and remitted the said amount to the credit of one Shaik Lathibee, Andhra Pradesh. The statement recorded from the pawn shop owner was also produced before this Court and revealed that the petitioner used to pledge the jewels frequently and the same was immediately redeemed by her. Within a short span of time, namely from 17.03.2021 to 14.04.2023, she pledged so many jewels for a huge loan amount. All the jewels were immediately redeemed by her. On the date of pledging the jewels, there were deposits in favour of Shaik Lathibee from Andhra Pradesh. He also produced call details and CDR details consisting of the calls from the petitioner. The receipts of the jewel pledged by the petitioner were also produced before this Court. Therefore, there are sufficient materials produced before this Court to corroborate the confession statement of the first accused to implicate the petitioner as an accused. Further, the petitioner was also conscious and constructive possession of contraband weighing 42 kgs of Ganja along with the first accused, which is a commercial quantity. Therefore, the custodial interrogation of the petitioner is very much required in this case. Hence, this Court is not inclined to grant anticipatory bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed."

9.The above said order was passed dismissing the petition on 20/06/2023. The petitioner was arrested, on 13/07/2023.

10.Now seeking bail, this petition has been filed with the following facts:-

"5.It is submitted that though her name is not implicated in the FIR through the alleged confession of 1st accused there is no specific allegation or overt acts stands against her either she have directly involved in transporting contraband or involved in the conspiracy of the same that is in what way of her participation or her aide is helped the 1st accused Parameshwaren either for transporting or selling the contraband is not mentioned in any place. Since severe



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difference of opinion is existed between them for the past several years, as a wife in the past four years period she had travelled with her husband one or two occasions that too for her family function alone except that she had never travelled with him for anything. In fact the matrimonial relationship between the petitioner and her husband was broken several years before but not divorce for the future of her two sons. Like the same manner except her two-wheeler bearing Registered No.TN59-AS-4905 advocate sticker was never been used any of the vehicle of her husband particularly she never allowed her husband to use advocate sticker for anything.”

11.Para 5, is diametrically opposite to the contention raised by her in the earlier occasion.

12.It is also further submitted that on 03/07/2023, she filed divorce petition against A1 before the Family Court. But on 13/07/2023, she was arrested.

13.Now it has been stated that since she has taken legal steps for saving her husband from the illegal arrest, she has been implicated to wreck vengeance because of the dispute with one Inspector of Police namely Esthar. According to her, on 12/03/2023 at about 9.30 in the night, she gave complaint against the police officials and others who took her husband.

14.Another complaint was given, on 13/03/2023. But the case has been registered against her husband, on 13/03/2023 as if he was apprehended at about 10.30 pm near Omachikulam main road along with contraband in a four wheeler.

15.We are not concerned about the personal affairs of this petitioner with her husband namely A1 herein. We will concentrate only upon the role alleged to have been played by the petitioner in the above said transactions.

16.The learned counsel appearing for the petitioner would submit that for the criminal activities of the husband, now this petitioner is being penalized. According to him, except advising and assistance in a lawful manner to save him from the criminal case, she has not involved in the drug trafficking.

17.Per contra, as stated above, the respondent would rely upon the call details and payment of deposit of money in the account, etc. facts.

18.Even though, the learned Additional Public Prosecutor heavily relies upon the pledging, redemption and raising of money for the purpose of helping A1 in the above said drug trafficking issue, the learned counsel appearing for the petitioner would submit that absolutely, this is not connected to the financial aid to A1. Because of her separate living, she had happened to pledge the jewels for her personal requirement and educational expenses of the two children. Merely because,



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she pledged the jewels and redeemed in a short time, that will not link her to the above said alleged drug trafficking.

19.No doubt that this is only a remote link. Whether the amount that was received by this petitioner by pledging the above said jewels were given to A1 for the purpose of purchasing Ganja is a matter for investigation. But after arrest, it appears that no effort was made by the Investigating Officer to trace out the link. No doubt that this will be a connecting or live linking. But absolutely, no call details concerning the petitioner has been collected.

20.Even perusal of the records does not indicate the above said. But the learned Additional Public Prosecutor would submit that as the petitioner is having several mobile phones and simcards, it may not be possible to collect the information, from which mobile number, she made a call with A1. It is also a matter for investigation. But no effort was also taken by the Investigating Officer, after the arrest to collect the information with regard to several mobile phones used by the petitioner. But all the articles have been seized or recovered only at the instance of A1. Similarly, the argument that the money was deposited in the account of is heavily relied by the prosecution.

21.But perusal of the records show that money was deposited in the account of Lathibee only by the husband of this petitioner. In the above said deposit vouchers, we find only the signature of her husband and not the petitioner herein.

22.Even though, it was submitted by the learned Additional Public Prosecutor appearing for the respondent that the advocate stickers were used by this petitioner for facilitating transport of Ganja, but except in one of the Cars, which was purchased by A1, no recovery has been made either from this petitioner or from A1. So this appears to be not correct on record, but may be that by utilizing the above said sticker, A1 would have used the Car, for which unless sufficient material to connect this petitioner, it will not have any bearing upon her implication.

23.The next point is that she made deposit in the account of Shaik Lathibee and Dhanapandi Raja.

24.Perusal of the records shows that it was deposited by A1. It has been stated that this petitioner has put up the signature of her husband. But it is not the case of the prosecution. That document was also not sent for any scientific examination.

25.The learned Additional Public Prosecutor would submit that the mobile number mentioned in the challan, on 09/02/2023 with the mobile number belongs to this petitioner, by correlating the same in the complaint given by her against the police officials.

26.It is true that it is correlating, but from this no presumption will arise that this petitioner made the above said deposit. So absolutely, it is not connecting link.



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27. Similarly, purchase of the Car by A1 along with this petitioner has also pointed by the learned Additional Public Prosecutor.

28. No doubt that in the course of the above said Car purchase business, this petitioner also alleged to have participated, but so far as the present crime is concerned, it cannot be linked. Similarly pledging, redemption, re-pledging of the jewels belongs to the petitioner has also been taken by the prosecution.

29. As mentioned above, whether any financial assistance was made by this petitioner in the above said drug trafficking is a matter for consideration by the Investigating Officer. Now for that purpose, continuation of the judicial custody may not be required.

30. No doubt that if the financial assistance is proved, then this petitioner has to be prosecuted and tried.

31. Now we are coming to the next point, whether the petitioner has satisfied the requirement of section 37 of the NDPS Act.

32. As stated above, except the fact that the petitioner was assisting and helping A1 in Car purchase business and that too some extent rendering the legal assistance in the pending criminal cases, the materials collected so far does not make out any prima facie case to make it believing that this petitioner has committed the offence.

33. The learned counsel appearing for the petitioner has also brought his personal knowledge about this petitioner stating that she is still living in a rented house along with her two children. She is also getting help from her father. Because of the illegal activities of her husband, she happened to live separately in *Madurai and attending the courts. Till the dismissal of the anticipatory bail application by this court, no arrest was made by the respondent police. So, according to him, this important factual aspect may also be taken into account by this court to decide whether the continuation of the judicial custody is required or not.

34. He would further submit that if really the petitioner was rendering illegal assistance to her husband in the illegal activities, she would have been implicated in all the other cases including drug trafficking matter. But not so. This, according to him, will probilise this defence.

35. No doubt that this is an important factor which weigh the mind of this court in considering the bail application favorably.

36. As things stand today, from the perusal of the records, I am of the considered view that now the petitioner is paying penalty for the criminal activities of her husband. This may not be required.

37. So I am of the considered view that considering the facts and circumstances of this case and also considering incarceration period as well as no previous bad



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antecedent is also reported against this petitioner, this court is inclined to grant bail to the petitioner with certain conditions. Accordingly, the petitioner is ordered to be released on bail on her executing 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 learned Principal Special Court for NDPS Cases, Madurai and on further condition that the petitioner shall appear before the respondent police on every Saturday at 10.30 a.m. until further orders.

sd/-
19/09/2023

(*)For Being Mentioned as per order of this Hon'ble Court dated 22.09.2023 in CRL OP (MD).16130 of 2023.

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22/09/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER

To

TO BE SUBSTITUTED WITH THE ORDER DATED 19/09/2023 ALREADY
DESPATCHED

- 1.The Principal Special Court for NDPS Cases,
Madurai.
- 2.The Inspector of Police,
Thiruppalai Police Station,
Madurai.
- 3.The Superintendent,
Central Prison (Women),
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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ORDER
IN
CRL OP(MD) No.16130 of 2023
Date :19/09/2023

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ED/ /SAR- (22/09/2023) 12P / 5C

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