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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 25/09/2023

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.OP(MD)No.17001 of 2023

Nagalakshmi : Petitioner/A6

Vs.

State rep. by
The Inspector of Police,
Town West Police Station,
Dindigul District.
(In Crime No.568 of 2022) : Respondent/Complainant

For Petitioner : Mr.M.Subash Babu
Senior Counsel
for M/s.Subash Law Office
For Respondent : Mr.S.Ravi
Additional Public Prosecutor

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

PRAYER:-For Bail Crime No.568 of 2022 on the file of
the respondent police.

ORDER: The Court made the following order:-



The petitioner/A9, who was arrested and remanded to judicial custody, on 02/01/2023 for the offences punishable under sections 8(c) r/w 20(b)(ii)(C) and sections 25 and 29(1) of the NDPS Act, in Crime No.568 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on secret information, the police party namely the de-facto complainant along with his team of police officials, went to the house of one Suresh Kumar in search of the contraband at about 06.00 pm, on that day they found 2 two wheeler along six persons. The police informer identified the accused and later, the above said persons were apprehended. Among six persons, one person fled away from that place. Others were secured and on enquiry they revealed their name as Suresh Kumar, Devayani, Vignesh @ Vikee, PandiSelvam and Ajaykannan. The name of the escaped person was found as Muthu Irul. Search was made and they were found in possession of 215 kgs of Ganja worth about Rs.3,15,000/-. On further enquiry, they revealed that Muthu Irul purchased the contraband from some unknown persons in Andhara Pradesh. They were arrested and further processes were undertaken as per the



rules and procedure. This petitioner was arrested and remanded to judicial custody. Finding her involvement in the course of investigation. She filed several applications before this court and that application came to be dismissed considering the gravity of the offence.

3.Crl.OP(MD)No.12965 of 2023 was filed by this petitioner stating that the contraband that was recovered from the house of the petitioner is only 16 kgs. According to her, no commercial quantity involved. That contention was rejected on the ground that huge quantity was purchased from Andhras Pradesh, transporting the same to Tamil Nadu and thereafter, separating the total quantity and selling. So, it was found that finding that in the course of very same transaction only, 16 kgs was recovered from this petitioner. The contention that it will not come under the commercial quantity was rejected.

4.Now this petition has been filed with a new ground that the house from which the above said quantity of contraband was seized belongs to her father. She was living in that house. According to her, mere living in the house from where the contraband is seized, will not prima facie indicate her involvement.



5. So the question, which arises for consideration is whether the new ground can be taken into account.

6. This court on further enquiry with the learned Senior Counsel appearing for the petitioner as to the reason for her living in the house of her father. But no acceptable reason or explanation was able to be given by the petitioner. Per contra, he will be referring to the order of the Hon'ble Supreme Court in the case of Suhail Ahmed Vs. State Rep through the Inspector of Police (SLP (Criminal) No. 6668 of 2023, dated 28/07/2023) for the purpose of argument that if no recovery is made from a particular person, then bail may be favorably considered. But no such broad proposition has been made by the Hon'ble Supreme Court in the above said order. In the above said case, the prosecution was relying upon some banking transactions and telephonic conversation between them. That cannot be taken as precedent for recording the finding in all the cases when no recovery is effected, then bail is automatic.



7.I am afraid that the order of the Hon'ble Supreme Court in the above said case can be extended to all cases. So this contention is rejected outright. When admittedly the Ganja has been seized from the house where the petitioner was residing, then she has to offer the explanation. But no acceptable explanation is offering.

8.He would rely upon the judgment of the Hon'ble Supreme Court reported in the case of Mohd Muslim @ Hussain Vs. State (NCT of Delhi) [(2023)2 MJ (Cr1) 549 (SC)]. He would refer the Para 17. There was a factual ground taken in the account by the Hon'ble Supreme Court. Para 20 reads as under:-

"20. 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



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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*¹⁹). 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.

9. Para 19 is also relevant for consideration. Para 19 reads as under:-

*“19. A plain and literal interpretation of the conditions under *Section 37* (i.e., that Court should be*



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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 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.

10. Para 16 reads as follows:-

"16. In the most recent decision, [Satender Kumar Antil v. Central Bureau of Investigation](#)¹⁶ prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with



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respect to several enactments, including [Section 37](#) NDPS Act. The court expressed the opinion that [Section 436A](#) (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the [Criminal Procedure Code, 1973](#) would apply:

"We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in [Section 436-A](#) of the Code would apply to the [Special Acts](#) also in the absence of any specific provision. For example, the rigour as provided under [Section 37](#) of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of [Section 309](#) of the Code."

11. By pointing out this judgment, it was contended on behalf of the petitioner that ever-since from the date



of arrest namely from 31/12/2022, she is in custody. He is also HIV Patient. The trial could not be taken in the immediate future. So on that account, bail is requested. Now in the light of the above said, now let us go to the materials available on record against the petitioner.

12. For that purpose, CD file is called for and perused. During the course of investigation, it was found that A1, A2 and A6 purchased Ganja from Andhra Pradesh. Totally 37 kgs of Ganja was purchased. They stored 12 kgs in the house of A2, A4 and A9. The remaining portion 16 kgs of Ganja was taken by A1, A3 and A9 to Vilalipatti. They gave 2 kgs to A7. 14 kgs to A8. On their way, from A1, A2 and A4. So the argument that no recovery was made or effected from this petitioner and she has been falsely implicated is completely out of place and not correct on record. Now the final report is also filed on 22/06/2023.

13. In the light of the above said development and considering the period of incarceration of the



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petitioner, there shall be a direction to the trial court to process the final report and complete the trial court within a period of five months from the date of receipt of a copy of this order. The petitioner is granted liberty to revive the bail application before the trial court after the examination of materials witnesses are over.

14. So, I find no merit now in this petition. Accordingly, this criminal original petition is **dismissed.**

25/09/2023

Index: Yes/No

Internet: Yes/No

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To,

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- 1.The Principal Special Court
for EC & NDPS Act cases,
Madurai.
- 2.The Inspector of Police,
Town West Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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