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

Reserved on: 20.01.2023

Pronounced on: 08.02.2023

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL OP(MD) . Nos.21629 and 23139 of 2022

- | | |
|--------------------|---|
| 1. S.Sudalai Muthu | ... Petitioner/Accused No.2
in Crl.O.P(MD)No.21629 of 2022 |
| 2. Abdul Rasak | ... Petitioner/Accused No.3
in Crl.O.P(MD)No.23139 of 2022 |

Vs

State through,
The Inspector of Police,
Sankarankovil Taluk Police Station,
Tirunelveli District.
Crime No.122 of 2021.

... Respondent/Complainant
in both petitions

In both petitions

For Petitioners : M/s.Ezhilarasu
for M/s. Abdul Rahuman S,
Advocate.

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

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

COMMON PRAYER :-

For Bail in Crime No. 122 of 2021 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioners/A2 and A3, who were arrested and remanded to judicial custody on 22.06.2021 for the offences punishable under Sections 8 (c)20(b) (ii)(C) of NDPS Act, in Crime No.122 of 2021 on the file of the respondent police, seek bail.

<https://www.mhc.tn.gov.in/judis>



2. Notice was issued to the learned Additional Public Prosecutor and counter was filed by the prosecution.

3. The case of the prosecution is that the petitioners along with other accused persons were found in illegal possession of 25.516kgs of kanja, which is more than the commercial quantity. Hence the complaint.

4. The learned counsel for the petitioners would submit that this is the second bail petition and the earlier petitions were dismissed as withdrawn on 23.08.2021 and 22.11.2022. He would further submit that the petitioners are innocent and they have been falsely implicated in this case and they are no way connected with the crime and nothing was recovered from them and there is no material on record to connect the petitioners with the crime and that the mandatory conditions under the NDPS act were not complied with by the respondents. The petitioners are in custody from 22.06.2021 and the petitioners has no criminal antecedents and the long incarceration before the trial would cause grave injustice to the petitioner and his family members and that the petitioners are ready to abide by any conditions that shall be imposed by this Court. He would further submit investigation has been completed in this case and final report has been filed and the same has been taken cognizance in C.C. No.18 of 2022 on the file of the I Additional Special Judge, NDPS Act Cases(FAC), Madurai, hence he seek bail.

5. The learned Additional Public Prosecutor would submit that the petitioners were found in illegal possession of 25.516kgs of kanja, which is a commercial quantity. He would further submit that the petitioners were present in the scene of occurrence and they were arrested along with the contraband. He would further submit that investigation has been completed and final report has been filed before the concerned Court. He would further submit that A1 moved a bail application before this Court and the same was dismissed by this Court in Crl.O.P(MD) No.20215 of 2022 dated 12.12.2022 with a direction to the trial court to dispose the case in C.C.18 of 2022 within a period of six months from the date of receipt of a copy of that order. He would further submit that if the petitioners are released on bail there is every possibility of them absconding and committing offence of similar nature and there is every possibility of them derailing the trial. He would further submit that the contraband being 25.516 kgs ganja which is a commercial quantity which attracts Section 37 of NDPS Act. The petitioners have not satisfied the conditions required under Section 37 of the NDPS Act for grant of bail. Hence he strongly opposed to grant bail to the petitioners/accused.



6. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor and perused the materials available on record.

7. The petitioners are arrayed as A2 and A3. The contraband involved in this case 25.516 kg which is commercial quantity which is stated to have been recovered from the possession of the petitioners and A1. Hence the petitioners have to satisfy the conditions under section 37 of NDPS Act for grant of bail.

a) opportunity to the Public Prosecutor to oppose the bail

b) *prima facie* satisfaction regarding availability of ground for believing that the accused is not guilty.

c) he is not likely to commit any offence while on bail.

8. On the broad probabilities of this case this Court at this juncture is unable to record its satisfaction on the existence of any substantial and probable cause for believing that the accused is not guilty of the offences charged. Further all submission of the petitioners with regard to the falsity of the case and against the possession of illicit articles and culpable mental state are ground for defence which can be kept open for consideration at the time of the trial.

9. This Court cannot at this stage conclude that the accused is not likely to commit any offence while on bail, thereby the condition imposed for grant of bail operates against the petitioners thereby the petition is liable to be dismissed. Further this Court while dismissing the earlier petition filed by the co-accused in CrI.O.P(MD) No.20215 of 2022 had directed the trial Court to dispose of the C.C. No.18 of 2022 within a period of six months from the date of receipt of copy of that order.

10. In the result, the Criminal Original Petition stands dismissed with a direction to the learned I Additional Special Judge, NDPS Act Cases(FAC), Madurai to comply with the earlier direction issued by the Court in CrI.O.P(MD) No.20215 of 2022 and complete the trial.

sd/-

08/02/2023

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/02/2023

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



TO

1. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
2. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
3. THE I ADDITIONAL SPECIAL JUDGE,
NDPS ACT CASES (FAC), MADURAI.
4. THE INSPECTOR OF POLICE,
SANKARANKOVIL TALUK POLICE STATION,
TIRUNELVELI DISTRICT.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP (MD) . Nos.21629 and 23139
of 2022

NA/SB/SAR-3/13.02.2023/4P/6C