



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

Reserved on: 13.02.2023
Pronounced on: 01.03.2023

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PRESENT

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

CRL OP(MD) . Nos.21413 and 21903 of 2022

Vinoth @ Vinothpandian

... Petitioner/Accused
in Cr1.O.P(MD) No.21413 of 2022

Suhail Ahmed

... Petitioner/Accused
in Cr1.O.P(MD) No.21903 of 2022

Vs

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

... Respondent/Complainant

In Cr1.O.P(MD) No.21413 of 2022
For Petitioner : Mr.Subash Babu, Senior Counsel
for Mr. Chandrabose M,
Advocate.

In Cr1.O.P(MD) No.21903 of 2022
For Petitioner : Mr.S.Poornachandran
Advocate.

In both petitions
For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor

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

COMMON PRAYER :-

For Bail in Crime No.31/2022 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioners/A4 and A5, who were arrested and remanded to judicial custody on 21.01.2022 and 26.08.2022 for the offences punishable under Sections 8 (C) r/w.20(b) (ii)(C) and 25 of NDPS Act, in Crime No.31 of 2022 on the file of the respondent police,

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seek bail.

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 on 21.01.2022 at about 18.30 hrs based on the secret information received by the Sub Inspector of Police, he along with the police party went near V.Grand Hotel, Surveyor Colony, K.Pudur, Madurai Town and at that time they saw a grey colour 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 kanja. Further based on the information furnished by A1 the respondent came to know that A2 namely Jeyakumar usually purchased Kanja from Andhra Pradesh and they tried to sell it in local area along with A3 to A5. Further on investigation the respondent police found two white colour gunny bags in A1's rented house in T.M.Nagar 4th street, Uthangudi each containing 19kgs of kanja. 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.

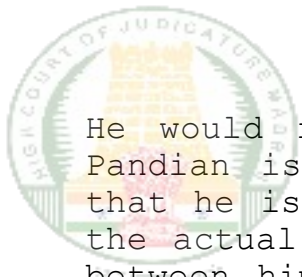
4. The learned Senior Counsel appearing for the petitioner in CrI.O.P(MD) No.21413 of 2022 would submit that the petitioner is innocent and he has been implicated as an accused based on the confession recorded from the co-accused/A1. He would further submit that as per the confession he along with one Jeyakumar has purchased the huge quantity of kanja and thereafter one Saravanan who belongs to Thindivanam, one Vinoth who belongs to Kadachanentahl and one Akil who belongs to Kerala have divided the kanja and used to sell the same gradually to general public. He would further submit that the petitioner never resides at Kadachanenthal at any point of time. Since the respondent police were unable to find out the real Vinoth who belongs to Kadachanenthal they have falsely implicated the petitioner in this case. He would further submit that the petitioner is working as a Trainee Professional Service Representative in Burgeon Private Limited and subsequently he was selected as Territory Business Manager in Ind-Swift Limited Company and worked for more than two years and thereafter he worked in Indoco Remedies Ltd, having Head Office in Mumbai and after two years he had worked in Alembic Eye car and at present he is working in Zydus Occucare Cardia Health Care from 2021 and receiving salary more than Rs.44,000/- per month, therefore it is not necessary for him to involve in the offence. Further the aadhar card and other identity proofs discloses that he never stayed or resided at Kadachanenthal. He would further submit that the first accused is a money lender and during Covid-19 pandemic situation the



petitioner has received Rs.50,000/- from him and he is paying interest in the account of the first accused except that the petitioner is not having any relation with the first accused. He would further submit that the mandatory provisions have not been followed during the arrest of the petitioner and the petitioner is in custody from 21.01.2022 and the long incarceration before the trial would cause grave injustice to the petitioner and his family members and that the petitioner is ready to abide by any condition that may be imposed by this Court. Hence he seeks bail.

5. The learned counsel appearing for the petitioner in Crl.O.P (MD) No.21903 of 2022 would submit that the petitioner is innocent and a false case has been foisted against him. He would further submit that the respondent police without any iota of material has implicated the petitioner in the present case. He would further submit that the petitioner has been implicated as an accused based on the confession given by A1 and the contraband was not recovered from the petitioner and he is not present in the scene of occurrence. He would further submit that the case was registered on 21.01.2022 and only seven months after the registration of the First Information Report, the petitioner was arrested. He would further submit that the petitioner was arrested based on the confession recorded which is inadmissible in evidence as per section 67 of the NDPS Act. In support of his contention, he relied on the decision of the Hon'ble Apex Court in the case of **Tofan Singh .vs. State of Tamil Nadu** reported in **2021(14)SCC 1**. He would further submit that the same was reiterated by the Full Bench of the Hon'ble Supreme Court in **State by NCB, Bengaluru Vs. Pallulabid Ahmad Arimutta and Another**. He would further submit that in the present case A1 who was arrested along with the entire contraband was released on bail as per section 167(2) of Cr.P.C and on the other hand the petitioner who is in no way connected with the crime is in jail. He would further submit that other than the alleged confession statement the respondent police has relied on the call details and tower location and that the CDR report has no legal significance and the person's personal liberty cannot be denied merely based on the circumstantial evidence, for which he relied on the judgement rendered in **Union of India (NCB) and others Vs. Khalil Uddin and others** reported in **2022 LiveLaw (SC) 878**. He would further submit that the petitioner is in judicial custody from 25.08.2022 and the long incarceration before the trial would cause grave injustice to the petitioner and his family members and that the petitioner is ready to abide by any conditions that shall be imposed by this Court. Hence he seeks bail.

6. The learned Additional Public Prosecutor appearing for the respondent would submit that the quantity involved in this case is 46kgs of kanja which is a commercial quantity. There are totally five accused in this case and the petitioners herein are A4 and A5.



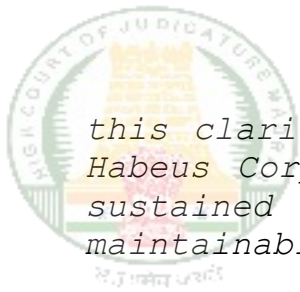
He would further submit that in so far as A4 Vinoth Pandian is concerned that though initially it was claimed by him that he is not the actual accused and one Kadachanenthal Vinoth is the actual person, he had after the disclosure of the call details between him and A1 during the relevant period had come out with a different stand that there was a borrower/lender relationship between them that there had been frequent calls between A1 who was arrested with contraband and A4 Vinoth Pandian. During the relevant point of time from 01.06.2021 to 24.01.2022 they have spoken with each other for more than 48 times and further bank transactions is also available between A1 and A4. So the main ground of the petitioner/A4 that A1 is totally stranger to the transactions is nullified based on the above said records. Further A2, A4 and A5 were found together just prior to the arrest of A1.

7. The learned Additional Public Prosecutor would submit that in so far as the petitioner/A5 is concerned the main contention is that he is an utter stranger and due to wrong identity he was implicated in the present case is totally false. The respondent had only after collecting relevant evidence against the accused and after due satisfaction effected arrest. While remanding the petitioner/A5 on 25.08.2022 an objection petition was filed on behalf of the petitioner. In the said petition the learned trial Judge passed an order as follows:

"the above named accused is produced before me at 7.55 pm., in my residence. No complaint against police. No external injuries found. Ground of arrest, legal aid explained, information of arrest verified. Available material perused and prima case made out. Counsel for accused present and objection for remand filed and recorded. The reason mentioned in the remand report is accepted. Hence accused is remanded to judicial custody till 08.09.2022 for 15 days. On the next remand the accused to be produced before the Hon'ble Principal Special Judge, NDPS Court"

8. He would further submit that the petitioner/ A5 approached the trial Court twice and the same was dismissed in CrI.M.P. No.2687 of 2022 on 17.10.2022. Later the petitioner without challenging the remand order or filing bail application before this Court had directly filed a Habeus Corpus Petition as if the petitioner was illegally detained and the same was not numbered and it was listed before the Hon'ble Division Bench of this Court for Maintainability in HCP(MD) No.Sr. 39272 of 2022 and the same was dismissed by this Court on 18.11.2022 with the following observation.

" In view of these facts the custody of the detenue cannot be termed as an illegal custody. Whether there was a mistaken identity and the detenu has been falsely roped in this case, is a matter of fact, which cannot be decided in a Habeus Corpus Petition. Hence, it will be left open to the petitioner to raise all these grounds before the competent court and work out his remedy. Except giving



this clarity , no further orders are required to be passed in this Habeus Corpus Petition . The objection raised by the Registry is sustained and this Habeus Corpus Petition is closed as not maintainable.

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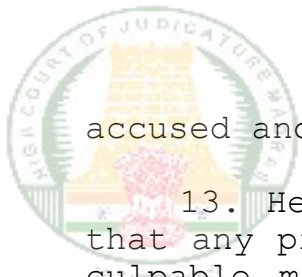
9. Thereafter challenging the said order the petitioner/A5 approached the Hon'ble Supreme Court and the same was not entertained and the said SLP was dismissed as withdrawn in SLP(Crl.) No.901 of 2023 dated 25.01.2023. Further suppressing all these facts the petitioner had filed a bail application before this Court. Already the plea raised by the petitioner /A5 about wrong identity was discussed by the remand magistrate and later they challenged the illegal detention by way of HCP and the same was also dismissed and was confirmed by the Hon'ble Supreme Court. Further there are other materials available to implicate the petitioner/A5 herein as accused. During the relevant point of time from 01.06.2021 to 24.01.2022 and A1 and A5 spoken more than 40 times with each other and further bank transactions are also available between A1 and A5. Further the tower location details have been obtained and that the call details report shows that prior to the occurrence and subsequent to the occurrence the first accused was in constant touch with A4 and A5 and all of them were frequently talking raising a presumption that all of them are well aware of the acts of drug trafficking. He would further submit that as per section 35 of the NDPS Act there is presumption with regard to the existence of culpable mental state. He would further submit that the investigation has been completed and final report has been filed before the Principal Special Court for NDPS Act cases, Madurai and the same has been taken up in C.C.No.53 of 2023 and pending trial.

10. He would further submit that in the case of **State of M.P. Vs. Kajad reported in (2001) 7 Supreme Court Cases 673**, the Honourable Supreme Court has held as follows:

" Negation of bail is the rule and its grant and exception under sub clause (ii) of clause (b) of Section 37(1) "

11. He would further submit that it clear that so far as the offences covered under NDPS Act, jail is the rule and the bail is an exception. Before granting bail, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The reasonable grounds appearing in Section 37(i) of NDPS Act means, something more than prima facie ground, it contemplates substantial probable causes for believing that the accused is not guilty of the alleged offences.

12. Further Section 29 of the NDPS Act which provides for punishment for abetment and criminal conspiracy and there is ample material to prove that the petitioners conspired with the main



accused and abetted the crime.

13. He would further submit that it is clear from this Section that any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state and it is for the accused to deny and prove that he had no such mental state. The question of abetment or criminal conspiracy cannot be looked into at the time of considering the bail application. These are the disputed facts have to be considered only based on oral and documentary evidence that would be adduced during the time of trial.

14. As already stated, the confession statement of the co-accused can be used for the "discovery of fact" supported by the corroboratory piece of evidence to implicate the accused in this case. Further A4 had initially stated that the actual accused is not him and one Kadachanenthal Vinoth and after the disclosure of frequent calls details between them tower location and financial dealing has now come out with an explanation that he had borrowed money. A5 had totally denied the nexus with A1, whereas there are call details as well as other materials to prove that A5 was in the company of A1 just prior to the arrest of A1. If at all they give any explanation to that it can be looked into only during the course of trial. In this case the accused who was arrested with contraband had implicated the other accused in the commission of offence and the role played by them.

15. He would further submit that the legal aspect in **Tofan Singh's** case cannot be applied to the facts of this case. In this case A1 from whom commercial quantity of drugs has been recovered even at the time of arrest had disclosed the names of the petitioner. Apart from the confession there are ample materials namely transfer of funds and call details and tower location to prove the presence of the petitioners along with A1 that they were in constant touch with A1 during the relevant point of time and that they conspired with him and abetted the crime. Further in this case the ganga seized is commercial quantity. Prima facie case is made out for registering the case under Sections 8 (c)r/w.20(b) (ii)(C) and 25 of NDPS Act for prosecution against the petitioners. The petitioners have not satisfied the twin conditions for granting bail under section 37 of the NDPS Act i.e., there are reasonable ground for believing that they are not guilty of such offence and that they are not likely to commit any offence while on bail, hence he seeks dismissal of the petition.

16. Heard both sides and perused the materials available on record.

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 Kadachanenthal Vinoth is the actual accused and he was falsely implicated in this case on mistaken identity. It 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 negatived 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.

18. In this regard it is relevant to refer the judgment of the Hon'ble Apex Court in the case of **Union of India vs Ratan Mallik @ Habul** reported in **(2009)2 SCC 624**, wherein it is held that merely because nothing was recovered from the accused, it could not be stated at this stage that the accused was not guilty of the offence.

19. It is relevant to extract hereunder section 29 of the NDPS Act, which provides for punishment for abetment and criminal conspiracy.

" 29. Punishment for abetment and criminal conspiracy.?

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which?

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India."

20. This provision implies that whoever abets, or is party to the criminal conspiracy to commit an offence punishable under this Chapter, whether such offence is committed or not in consequence of such abetment or in pursuance of such criminal conspiracy is punishable with the imprisonment provided for the offence.

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.

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.

23. Having gone through the materials this Court is of the view that the petitioners have not satisfied the conditions as required under section 37 of the NDPS Act for grant of bail.

24. In view of the above, these criminal original petitions stand dismissed. It is made clear that the observation made are only for deciding the bail applications and it will not have any bearing during trial. The trial Court shall decide the case of the petitioners on its own merits based on the evidence let in during trial.

sd/-

01/03/2023

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

AAV

TO

1. The Inspector of Police,
K.Pudur Police Station,
Madurai City.
2. The Superintendent,
Central Prison, Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER

IN

CRL OP(MD) No.21413 and 21903 of 2022

Date : 01/03/2023

NA/SAR-2/08.03.2023/8P/4C

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