



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2023

PRESENT

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P (MD) No.21855 of 2022

Palanikumar

... Petitioner/Accused No.10

-vs-

State represented by
The Inspector of Police,
NIB CID, Ramnad.
(Cr.No.46 of 2021)

... Respondent/Complainant

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

PRAYER :-

For Bail in Crime No.46 of 2021 on the file of the Respondent
Police.

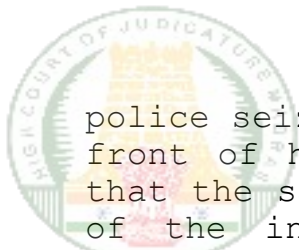
For Petitioner	: Mr.R.Rajan, Advocate
For Respondent	: Mr.T.Senthil Kumar Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 30.07.2022 for the offences punishable under Sections 8 (c), 20(b)(ii)(C), 25, 27A and 29(1) of NDPS Act in Crime No.46 of 2021 on the file of the respondent police, seeks bail.

2.The case of the prosecution, as per the de-facto complainant, is that on 25.12.2019, at about 05.00 hours, the respondent police got secret information about the illegal transportation of Ganja and the respondent Police forwarded the same to the higher officials and went to Othapatti Seashore (Dhanuskodi Road) at about 07.00 hours and on the identification by the secret informer, the respondent Police caught the persons, who were standing near a car (TAVERA CAR) bearing Reg.No.TN 69 AP 9408 and on enquiry, they came to know that they are 1.Dharmaraj @ Thooppakki Raja, son of Murugesan, 2.Gopinath, S/o. Kumar, 3.Ramesh S/o. Chandran, 4.Rameshm, S/o.Muniyasamy, 5.Jeyamuniyaraja, S/o.Murugesan, 6.Nagaraj, S/o. Sethu. On further search, the respondent police found 2 Nos. of while colour gunny bags in the above said Tavera car and weighing the same, they came to know that one bag contained 20 kgs of Ganja and another bag contained 10 kgs of Ganja.

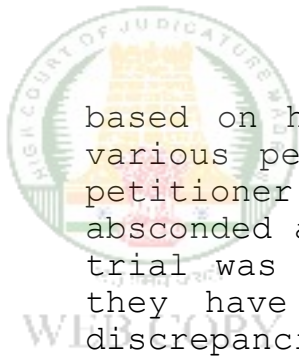
3.Further on the basis of the information furnished by the accused Nos.1 and 6, namely Dharmaraj @ Thooppakki Raja and Nagaraj, the respondent Police arrested one Banumathy, wife of Murugesan and on the basis of the information furnished by her, the respondent



police seized one white colour gunny bag, which was hidden in front of her residence and weighing the same, they came to know that the said bag contained 20 kgs of Ganja. Further, on the basis of the information furnished by the Accused No.1, Dharmaraj @ Thooppakki Raja, the respondent Police secured Accused No.8, Seenivasan, son of Panchavarnam at New Bus Stand, Ramanathapuram at about 18.30 hours and seized one white colour bag possessed by him and on further search found that Accused No.8 possessed 10 kgs of Ganja in the said bag. Further, on the basis of information furnished by the Accused No.6, Nagaraj son of Sethu, the respondent police seized a boat Reg.No.IND TN 10 MO 2389 (Engine No.TND1412601) and on search, the respondent Police found one white colour gunny bag in the said boat and further, the respondent police weighing the same and came to know that 20 kgs of Ganja available in the said bag and arrested the accused persons. Later, based on the confession of A1, that the petitioner, who is his brother, had assisted him in the illegal trade of Ganaj, the respondent police arrested the petitioner on 30.07.2022. Hence, the case.

4.The learned Counsel for the petitioner would submit that the petitioner is an innocent and he has been roped-in in this case based on the alleged confession stated to have been recorded from A1, who is his brother. The respondent Police have also recorded a confession, as if the petitioner's two other brothers and his mother were also involved in the case. Subsequently, A1 to A8 were arrested and the three persons, who were implicated based on confession, were shown as absconding accused and final report has been filed and taken up in C.C.No.38 of 2020 on the file of the Special Court for NDPS Act Cases, Pudukottai. Later, the case was split up as against the absconding Accused Nos.9 to 11 in C.C.No.46 of 2021 and the trial proceeded in C.C.No.38 of 2020 and after full fledged trial, the trial Court had acquitted A1 and A8. He would further submit that other than the alleged confession recorded from A1, there is absolutely no material available as against the petitioner. Further, while the petitioner has been regularly appearing before the same trial Court in connection with a trial in C.C.No.6 of 2013 the respondents have shown the petitioner as an absconding accused and filed the final report. The learned counsel for the petitioner would further submit that in respect of the present case in Crime No. 46 of 2021 there is absolutely no recovery other than the confession recorded from the main accused/A1. The fact remains that the main accused A1 and others have been acquitted after full fledge trial and in such circumstances the petitioner has satisfied the conditions as required under Section 37 of the NDPS Act, thereby he seeks for grant of bail to the petitioner.

5.The respondent has filed a detailed counter. The learned Additional Public Prosecutor would submit that the petitioner is arrayed as A10 in this case. The petitioner is the younger brother of A1 and based on information, a search was conducted in the house of the petitioner from his house, 20 kgs of Ganja was recovered. Later,



based on his confession, totally 80 kgs Ganja were recovered from various persons. A1, two other brothers and his mother and this petitioner were also added as accused. Accused Nos.9 to 11 have absconded and thereby, the case was split up as against them and the trial was conducted as against A1 to A9 in C.C. No.38 of 2020 and they have been acquitted by the trial Court on the ground of discrepancies with regard to arrest and recovery of contraband.

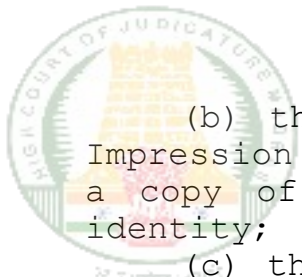
6.He would further submit that the petitioner has got one previous case registered by "Q" Branch Police, Ramanathapuram in Cr.No.1 of 2010, for the offence punishable under Sections 8(C) r/w 21(b) of NDPS Act r/w 25(1)(B)(a) of Arms Act and 13(i)(ii) of Unlawful Act, in which, the petitioner along with other accused was found in possession of 500 grams of heroin and the petitioner is facing trial in C.C.No.6 of 2013 on the file of the Special Court for NDPS Act Cases, Pudukottai. However he would submit that though the petitioner was shown as an absconding accused in this case, he has been regularly appearing for trial before the same trial Court concerned in C.C. No.6 of 2013. However, considering the gravity of offence, the learned Additional Public Prosecutor would vehemently oppose to grant bail to the petitioner.

7.Heard the learned Counsel and perused the materials available on record.

8.In this case, the petitioner is stated to have been implicated based on the confession recorded from A1. Other than the alleged confession recorded from A1 there is absolutely no material to implicate the petitioner to the crime and the trial in respect of A1 to A9 was conducted in C.C.No.38 of 2020 on the file of the Special Court for NDPS Act Cases, Pudukottai, and they have been acquitted. Though it is stated that the petitioner was shown as absconding accused in C.C. No.38 of 2020 it is submitted by the learned counsel for the petitioner that the petitioner is facing trial in C.C. No.6 of 2013 on the file of the very same trial Court and he was regularly appearing. In such circumstances, this Court finds that the petitioner has satisfied the condition, as required under Section 37 of NDPS Act.

9.Taking into consideration of above facts and the fact that the petitioner is in judicial custody from 30.07.2022, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only), with two sureties each for a like sum to the satisfaction of the learned Special Judge for NDPS Act Cases, Pudukottai, and on further conditions that:



(b) the sureties shall affix their photographs and Leave Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner shall report before the the learned Special Judge for NDPS Act Cases, Pudukottai, on all working days daily at 10.30 a.m., until further orders;

(d) the petitioner shall not commit any offences of similar nature;

(e) the petitioner shall not abscond either during investigation or trial;

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/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 released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala** [(2005)AIR SCW 5560];

(h) if the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-

13/02/2023

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

cmr

To

1 THE SPECIAL JUDGE FOR NDPS ACT CASES, PUDUKOTTAI.

2 THE OFFICER INCHARGE, DISTRICT JAIL, PUDUKOTTAI.

3 THE INSPECTOR OF POLICE, NIBCID, RAMNAD.

+1 CC to M/s.R.RAJAN, Advocate (SR-2223[I] dated 13/02/2023)

ORDER

IN

CRL OP(MD) No.21855 of 2022

Date :13/02/2023

RS/VR/SAR.(13.02.2023) 4P-5C