



WEB COPY

CRL OP(MD). N



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 06/02/2023
PRESENT

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

CRL OP(MD). No.22435 of 2022

K.Sudhakar

... Petitioner/Accused No.4

Vs.

State rep.by
Inspector of Police,
NIP-CID,
Nagapattinam District
(Crime No.06 of 2022)

... Respondent/Complainant

For Petitioner : Mr.M.RAMU, Advocate
for Mr.NA.Manimaran, Advocate
For Respondent : Mr.T.SENTHIL KUMAR
Additional Public Prosecutor

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

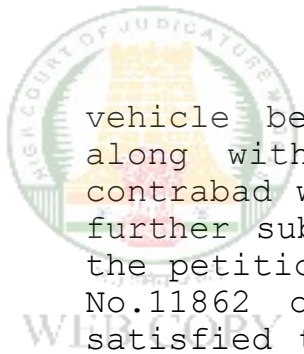
PRAYER :- For Bail in Crime No.06 of 2022 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/A4, who was arrested on 18.01.2022 and remanded to judicial custody for the alleged offences punishable under Sections 8(c) r/w 20(b), (ii) (C) and 25 of the NDPS Act, in Crime No.06 of 2022, seek bail. The case was transferred to NIB-CID and registered as Crime No.06 of 2022 under Section 8(c) r/w 20(b) (ii) (C) 25 and 29(1) of NDPS Act.

2.The case of the prosecution is that on 18.01.2022 the defacto complainant, on a secrete information along with the police team were on looking for suspect near Bharathidhasan University. At that time, two vehicles came from the south direction. Both the vehicles were intercepted. Totally, eight persons were in occupation of the above said two vehicles. On enquiry, they disclosed their names. They were searched. A Car bearing registration No.KL-01-BW1431 was found carrying ganja weighing about 167 kgs. Further process was undertaken and all the accused persons were arrested on the spot itself and remanded to judicial custody.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would submit that the allegation of the prosecution is that the petitioner was a co-passenger along with A3 and A5 in a



vehicle bearing Registration No.AP-31-BY-1287 and the petitioner along with other accused was following the Car, in which the contraband was transported, to purchase the same from them. He would further submit that A3 and A5, who are similarly placed as that of the petitioner, moved bail petition before this Court in Crl.O.P(MD) No.11862 of 2022 and this Court, finding that co-accused have satisfied the condition required under Section 37 of NDPS Act, had granted bail to them on 03.08.2022. He also submits that the petitioner is ready to abide by any stringent condition that may be imposed on him and he is ready to appear before the trial court on all hearing dates without fail. He prays for grant of bail to the petitioner.

4.The respondent has filed a counter affidavit dated 19.12.2022 before this Court.

5. The learned Additional Public Prosecutor appearing for the respondent would submit that the respondent police intercepted 2 Cars and in the Car bearing Reg. No. KL-01-BW1431, contraband was recovered and the petitioner was travelling in another Car bearing Reg. AP-31-BY-1287 and all the accused including the petitioner were arrested on the spot. However, he would submit that A3 and A5, who have been similarly placed accused, have been released on bail by this Court. He would also submit that trial has commenced in this case and P.W.1 has been examined by the Court. He opposes for grant of bail to the petitioner.

6. At this juncture, the learned counsel for the petitioner would submit that the Presiding Officer of the concerned court is not available and therefore, there is no progress in the trial. He would reiterate that the similarly placed accused have been granted bail by this Court in Crl.O.P(MD)No.11862 of 2022 by order dated 03.08.2022.

7. Heard and perused the materials available on record.

8. The petitioner is arrayed as A4 and the petitioner along with A3 and A5 are stated to have travelled in a Car bearing Reg.No. AP-31-BY-1287. The similarly placed A3 and A5 have moved bail petition before this Court. This Court by order dated 03.08.2022 has granted bail in Crl.O.P(MD)No.11862 of 2022.

9. It is relevant to extract paragraph Nos.6 to 11 in the order dated 03.08.2022, which reads as follows:

6.Now the learned counsel appearing for the petitioners would submit that if really their intention was to purchase the contraband from the above said co-accused persons, they would have purchased the same, either at the place where it was taken or in the midway and they need not follow the above said Car for purchasing the same. But however, it is seen that reason for the petitioners to follow the above said Car is not properly explained by



7.No doubt that there is a suspicion on the side of prosecution that the petitioners might have intended to purchase the contraband from the co-accused. So preparation and attempt to purchase are punishable. But even to show the attempt to purchase, no materials have been collected so far, either in the form of CDRs, advance payments, etc. Except the confession of the co-accused, no other material is available.

8.Even though the reason assigned by the petitioners to follow the above said Car is not explained, but as stated earlier, a logical and reasonable argument has been advanced by the learned counsel appearing for the petitioners to the effect that if really they have intended to purchase the same, they would have purchased it, either at the point of collection or midway. So the circumstance, according to the petitioners is sufficient enough to satisfy the requirement of section 37 of the NDPS Act.

9.Even though, it is the contention on the part of the prosecution to the effect that that joint possession must be construed, but I am afraid that such joint possession theory can be adopted and extended to these petitioners. As mentioned earlier, they were not travelling in the Car, in which the contraband was available.

10.As mentioned above, preparation to purchase the contraband itself is punishable. But whether towards accomplishing the intention to purchase where any first step was taken by the petitioners is a matter for investigation and trial. As mentioned earlier, the best possible evidence that can be made available to this court is at present is CDR details. But as mentioned earlier, even after a lapse of seven months, no details have been collected. No materials have been collected to show the offer price or acceptance price and whether the price was paid is also not clear on record.

11.In the facts and circumstances of the case and also considering the duration of the custody of the petitioners, they can be enlarged on bail on condition that they must stay at Nagapattinam and appear before the respondent police and cooperate with him to complete the process of investigation. If during the course of investigation, if any material is collected to show the involvement of the petitioners, in the above said offence or any bad antecedents or materials are collected, then the respondent police is at liberty to file an application for cancellation of bail.

10. Accordingly, this Criminal Original Petition is allowed. The petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand and two hundred and two sureties each for a like sum to the satisfaction of



the Principal Special Court for EC & NDPS Act Cases, Thanjavur and on further condition that:

[a] the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent Police Station everyday at 06.30 p.m., until further orders and report before the concerned court on all hearing dates;

[c] the petitioner shall not tamper with the evidence or witness either during investigation or trial;

[d] the petitioner shall not abscond either during investigation or trial;

[e] on breach of any of the aforesaid conditions, the learned 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]**; and;

[f] if the accused/ petitioner thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

06/02/2023

/ TRUE COPY /

06/02/2023

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

CM

TO

- 1 THE PRINCIPAL SPECIAL JUDGE FOR EC & NDPS ACT CASES, THANJAVUR.
- 2 THE OFFICER INCHARGE, DISTRICT PRISON, NAGAPATTINAM.
- 3 INSPECTOR OF POLICE,
NIP-CID, NAGAPATTINAM DISTRICT
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to M/S.NA.MANIMARAN, Advocate, SR.No.1878

ORDER IN

CRL OP(MD) No.22435 of 2022
Date : 06/02/2023

RK/MMS/SAR (07.02.2023) 4P/6C

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