



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

Date : 22/02/2023

PRESENT

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

CRL OP(MD). No.23199 of 2022

WEB COPY

M.Sethupathi

... Petitioner/Accused-5

Vs

State Rep.by

The Inspector of Police,
Rameshwaram Town Police Station,
Ramanathapuram District.
(Cr No.128/2022).

... Respondent/Complainant

For Petitioner : M/s Senthil Kumar.A, Advocate
For Respondent : Mr.T.Senthil Kumar,
Government Advocate (Crl.Side)

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

PRAYER :-

For Bail in Crime No.128/2022 on the file of the respondent police.

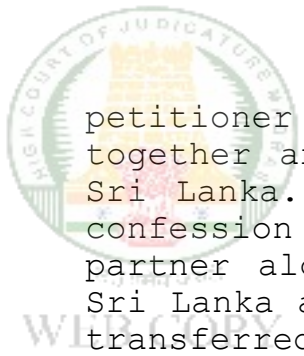
ORDER : The Court made the following order :-

The petitioner/Accused, who was arrested and remanded to judicial custody on 09.04.2022, for the offence punishable under Sections 8(c) r/w 22(c), 23(c), 28, 29(1) of NDPS Act in Crime No. 128 of 2022, on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant is that on 09.04.2022, the accused persons were found in possession of 925 grams of Methamphetamine. Hence, the complaint.

3.The learned counsel for the petitioner would submit that the petitioner has been arrayed as A5 in this case. He is innocent and he has been falsely implicated in the case. The alleged occurrence stated to have happened on 09.04.2022 and the petitioner was out of the country, even three months prior to the occurrence, he had gone to Sri Lanka on 23.01.2022 and he had come back to India only on 04.07.2022 and other than the confession statement recorded from the arrested accused, there is no material to connect the petitioner to the crime. In such circumstances, the petitioner is entitled for bail, since there is no material to connect the petitioner to the crime. Hence, prays to enlarge him on bail.

4.The respondent Police has filed a detailed counter. The learned Additional Public Prosecutor would submit that the



petitioner is a partner with the other accused and they have worked together and involved in the trade of contraband for smuggling to Sri Lanka. The first accused, at the time of arrest, had given a confession statement implicating the petitioner that he is also a partner along with them in the purchase of drugs and smuggling to Sri Lanka and his name is also found in the FIR. The petitioner has transferred an amount of Rs.60,000/- from his account to the account of A1. He would further submit that in this case LW13 has stated about the transfer of amounts from the account of the petitioner to the account of A1. Right from the beginning, A1 has confessed about the involvement of the petitioner and thereby the petitioner has abetted to commit the crime and it would be premature to consider for what reason the money was sent for by the petitioner. The petitioner has not satisfied the conditions under Section 37 of NDPS Act. In this case, trial has been commenced, PW1 as examined in chief and posted for cross examination of PW1 on 28.02.2023. There are 14 witnesses and the respondent will be able to complete the trial as expeditiously as possible. When there is specific material of transferring money during the relevant time, the question of whether there was abetment and criminal conspiracy or not cannot be gone into at the time of considering the bail petition. These aspects have to be considered on the basis of oral and documentary evidences that would be adduced during the trial of the case. Hence, prays to dismiss petition.

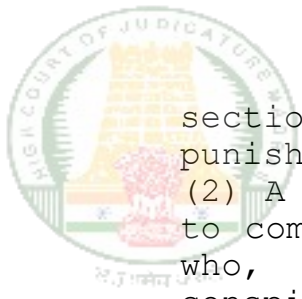
5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. It is case on specific information the respondent police conducted search and arrested A1 to A3 and from their possession the respondent police had seized 925gms of Methamphetamine, which is a commercial quantity. Even at the time of arrest A1 to A3 they have spoken about the involvement of the petitioner in the crime and having abetted them. As per the prosecution there are materials to show that he was in constant touch with the other accused and he has transferred amount of Rs.69,000/- from his account to the account of A1 and that LW.13 had spoken about the transfer of amount from the account of petitioner to the account of A1. The allegation against the petitioner is that he has abetted the other accused in the crime.

7. 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



section 116 of the Indian Penal Code (45 of 1860), 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."

8.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.

9.The allegation against the petitioner is that he 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.

10.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.

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

12.In view of the above, this criminal original petition stands dismissed. However, the learned Additional District and Sessions Judge, Special Court for EC Act Cases, Pudukottai is directed to conclude the trial, as expeditiously as possible, preferably, within a period of three months, from the date of receipt of copy of the order.

sd/-

22/02/2023

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/03/2023

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



TO

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SPECIAL COURT FOR EC ACT CASES, PUDUKOTTAI.

2 THE OFFICER INCHARGE, DISTRICT PRISON, PUDUKOTTAI.

3 THE INSPECTOR OF POLICE, RAMESHWARAM TOWN POLICE STATION,
RAMANATHAPURAM DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.23199 of 2022

Date :22/02/2023

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