



CRL OP(MD). No.4172 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 24/06/2024

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

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Tony @ Anto Varghese,

... Petitioner/ Accused/ Accused

Vs

1.The Inspector of Police,
Nagamalai Pudukkottai Police Station
Madurai District.
[Crime No.33/2023]

... Respondent/ Complainant/ Complainant

2.The Secretary,
Bar Council of Tamil Nadu and Pudhucherry,
Chennai.

(R2 suo-motu is impleaded as per order of this
Court dated 10.04.2024 in Crl.OP(MD).
No.4172/2024)

For Petitioner : M/s Santhanam Rajesh.B, Advocate.

For Respondents : Mr.T.Senthilkumar,
Additional Public Prosecutor

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

PRAYER :- To release the petitioner / Accused on Bail in C.C No.809/2023 on
the file of the Principal Special Court for trial of NDPS Act Cases, Madurai.

ORDER : The Court made the following order :-

The petitioner, who is an accused in C.C.No.809 of 2023 on the file of the
learned Principal Special Court for trial of NDPS Act Cases, Madurai, has filed this
application seeking bail. The said case was registered for the offence under Sections 8



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(c) r/w 20(b) (ii) (c), 25 and 29(1) of NDPS Act in Crime No.33 of 2023 on the file of the respondent police.

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2.The case of the prosecution is that on 01.02.2022, at about 06.30 hours, based on the secret information, the respondent police went near Thuvariman Kanmai Karai on Dindigul to Virudhunagar Road and found the accused persons coming in a vehicle bearing Registration No.KL 02 BP 9193. On seeing the police party, they attempted to escape from the place. The respondent police nabbed the accused and on enquiry they found that the accused were in possession of 100 kgs of Ganja. The said contraband was seized by the respondent police.

3.Mr.B.Santhanam Rajesh, learned Counsel appearing for the petitioner submits that apart from the confession statement, there is no other material as against the petitioner. However, the petitioner was arrested on 15.02.2023 and is languishing in jail for more than 15 months.

4.The learned Additional Public Prosecutor appearing for the respondent submits that the petitioner hails from Kerala and apart from the confession statement, LW.13 and LW.14 have deposed about the role of this petitioner that the offending car belongs to LW.14, which was given to the petitioner for a casual trip in Kerala by LW.14. However, the petitioner gave the car to A1 to A3 for committing the offence. He further submits that the R.C. book of the vehicle has been recovered from the



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petitioner.

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5.This Court considered the rival submissions and perused the materials placed on record.

6. This petitioner was arrested on 15.02.2023 based on the confession statement of the accused. The allegations as per the confession statement is that the petitioner gave the car to A1 to A3. Subsequently A1 to A3 were arrested with possession of 100 kgs of ganja in the said vehicle. The owner of this car is LW14, who has stated that he gave the car for a casual trip in Kerala to the petitioner. It appears that the petitioner gave this car to A1 to A3, who used the said car for the commission of offence and this car was traced in Madurai. The petitioner was arrested on 15.02.2023 and he is still in jail based on these materials. Considering the materials as against this petitioner and the manner in which the investigation has been conducted, this Court is of the view that this petitioner has been made as a scapegoat to save the owner of the car. The investigating agency has not collected any materials as to when he gave the car for casual trip to the petitioner, how this car has come to Tamil Nadu, why the car owner has not questioned the petitioner for several days and all these questions are still unanswered. Though the respondent police has relied on the statement of LW.14 / owner of the vehicle, they have not collected any materials other than the statement recorded under Section 161 (3) Cr.P.C. However by creating



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a record as if they have recovered the RC book from the petitioner, they have also filed a final report in the year 2023, which is also taken on file in CC.No.803 of 2023.

7.Considering the materials as against this petitioner, the manner in which the investigation has been conducted, final report has been filed and also considering that the final report has been taken on file in CC.No.803 of 2023 and the period of incarceration, this Court is inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is allowed and the petitioner is ordered to be released on bail on the following conditions:-

i) The petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand) with two sureties each for a like sum to the satisfaction of the learned Principal Special Court for Trial of NDPS Act Cases, Madurai, one of the sureties must be from Kerala.

ii) The petitioner and the sureties shall submit a copy of their Aadhaar Card or any other identity card issued by the Government in proof of their residence address;

iii) The petitioner shall report before the trial Court in all hearing dates without fail;

iv) The petitioner shall not misuse the liberty granted to him by indulging in any further offence and shall not tamper with the



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prosecution witnesses. The petitioner shall be available for the trial as well.

v) On violation of any of the above conditions by the petitioner, the respondent police shall move an application for cancellation of the bail.

Before parting with,

8.This bail application was filed by one Advocate Mr.P.Thanga Prithvirajan. When this bail application was taken up for hearing on 05.04.2024, he was not present before this Court. Mr.B.Santhanam Rajesh, learned Counsel represented before this Court that he only got instructions in this case to file this bail application. However, without any instructions of the petitioner, the counsel Mr.P.Thanga Prithvirajan has filed this bail application. He further submits that he has also requested Mr.P.Thanga Prithvirajan to give consent for filing his vakalath. This Court has verified the files and found out that the application has been filed by Mr.P.Thanga Prithvirajan, with a memo of appearance, but without the signature of the petitioner and also his signature. It is very unfortunate, the Registry has also numbered this application without even ascertaining, whether the Counsel has signed the memo of appearance or not? However, the Vakalath of Santhanam Rajesh was returned by the Registry by referring Order III Rule 5 of Appellate Side



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Rules on 04.04.2024.

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9.This Court considering the submission of Mr.B.Santhanam Rajesh, permitted him to file Vakalath before the Registry and the same was also taken on file. On the next date of hearing on 10.04.2024 Mr.P.Thanga Prithvirajan, learned Counsel claimed that he is also having instructions and he also produced a vakalath. It appears that he has managed to get another vakalath from the accused after the earlier orders of this Court. Though he is said to have obtained vakalath on 21.03.2024, he has filed this bail application with a memo of appearance on 12.03.2024 and it is not known for what purpose he obtained a vakalath from the accused on 21.03.2024.

10.Mr.Sanathanam Rajesh and other counsel, who were present before this Court have stated that this is how the cases are filed without any instructions in the NDPS Courts and that too particularly by one Advoate Pandiyaraj. It is stated that this Pandiyaraj alone is filing vakalath in 80% of the NDPS cases that too with the nexus of police officials, without the instruction of the accused.

11.Since serious allegations have been made that an Advocate without instructions of the clients has been filing bail applications, this Court suo motu impleaded the Secretary of the Bar Council of Tamil Nadu and Pudhucherry as party to this petition, to offer their suggestions in order to prevent such incidents in future.



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12. This Court has also directed Mr.P.Thanga Prithvirajan, to file an affidavit before this Court on his stand. This Court has also requested Mr.S.Anantha Narayan, learned Senior Counsel to suggest the remedial measures to eradicate this menace in the mofussil Courts.

13. Accordingly, Mr.P.Thanga Prithvirajan, has filed an affidavit as under:

“On behalf of the petitioner / accused No.5 my father Pandiarajan, who is an Advocate had instruction from the petitioner/ accused No.5 for filing bail petition on his behalf before the Hon'ble Principal Special Court for trial of NDPS Act cases, Madurai after that the bail application has been filed and taken on file as CrI MP.No.195 of 2024 in CC.No.809 of 2023. The same was dismissed by the Hon'bl Principal Special Court for Trial of NDPS Act Cases, Madurai on 01.02.2024. The same was informed to the petitioner / Accused No.5. Subsequently on the basis of the instruction given by the petitioner/ accused No.5 to the Advocate Pandiarajan, I have filed bail petition before this Hon'ble Court on 12.04.2024 and the same was numbered as CrIOP(MD)No.4172 of 2024.

He has also attributed motive as against Mr.Santhanam Rajesh that he is having motive as against his father Pandiyarajan.



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14.The learned Amicus Curiae submits that there is unholy trinity between the police, particularly Court-orderly, Advocate and Inspector of Police or Station House Officer. The main accused is the Court-orderly. Once a person is taken into custody, his or her relatives approaches the police station, where the court-orderly is the person, who directly interacts with them, appraises them about the case, gives the address and phone number of their advocate. He also directly informs the said advocate. The court-orderly fixes the fees in most cases and it would be shared among them. If the accused chooses his own advocate, the accused will have to face a very tough time, wherein, the case details are not informed to the accused's advocate. The Inspector of Police does not give reply to the bail petition. Even if reply is given, the court-orderly does not produce the same to the Court by stating that the Inspector of Police is busy in another case and seeks time to give reply. If the bail is filed by their syndicate advocate, they also suppress the material facts like previous cases and other details.

15.The learned Amicus Curiae further submits that if a surprise check is made in the police station, the visiting cards of those advocates, who are having nexus with police officers, can be found. Insofar as the cases in the Special Court for the NDPS Act are concerned, the learned Amicus Curiae / Senior Counsel points out towards the senior officers that they are also indulging in such practices. The Inspector of



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Police and the Assistant Commissioner of Police have an advocate or two and they choose the advocate according to the status of the accused. According to him this is the state of affairs in NDPS cases all over the State and one particular advocate would be appearing in most of the cases. The moment an arrest is made, the particular advocate would be engaged at the instance of the police and they provide all the case details to that advocate. If any other advocate wades inside, the police drive him to run from pillar to post to get the details. The instructions would be delayed and the bail application would be opposed strongly in those cases.

16.This Court is unable to accept these contentions of the learned Amicus, however it cannot be ruled out in toto. The learned Amicus is a reputed trial lawyer and having several years of practice. He is also a designated Senior Counsel. I am also having some personal experience the manner in which the bail applications are filed in the Egmore Metropolitan Courts. We are witnessing as to how the instructions are provided in some bail applications. We are also witnessing the manner in which the Motor Accident Claims Original Petitions are filed and the quantum of fees charged in those cases. Those who are having nexus with the police alone can practice before the Motor Accidents Claim Tribunals. Everyone including the members of the Bar Council is aware of this fact. However we have no courage to correct this unhealthy system.



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17.The faith and confidence of a common man on this institution would be retained only when our system functions in the proper manner. It is not the responsibility of the Court alone, but also the members of the Bar. The allegations made by the Counsel in this case and the apprehension expressed by the designated Senior counsel of this Bar have to be eradicated and no further such incident should occur. Therefore the Bar Council of Tamil Nadu and Pudhucherry and the Director General of Police have to take a call on this issue and provide necessary instructions to their members and also have to protect and maintain the dignity of this institution. The DGP shall also find out the possibility of changing the court duty constables periodically, since continuation of the very same officers for court duty, may lead to formation of syndicate, as pointed out by the learned Senior Counsel.

18.Any form of mischief in the process of deciding the personal liberty of anyone has to be prevented and it is the responsibility of every one of us in the system.

sd/-
24/06/2024

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/07/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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SJI/DSK

TO

1 THE PRINCIPAL SPECIAL JUDGE
FOR TRIAL OF NDPS ACT CASES, MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
NAGAMALAI PUDUKKOTTAI POLICE STATION
MADURAI DISTRICT.

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

COPY TO:-

1 THE SECRETARY,
BAR COUNCIL OF TAMIL NADU AND PUDHUCHERRY.
CHENNAI.

2 THE DIRECTOR GENERAL OF POLICE,
CHENNAI.

ORDER

IN

CRL OP(MD) No.4172 of 2024

Date :24/06/2024

SA/JGB/SAR. /09.07.2024/11P/7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.