



CRL OP(MD).No.4380 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 23.04.2024

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD).No.4380 of 2024

Sutheshlimma

... Petitioner/ Accused

Versus

State through
The Inspector of Police,
Usilampatti Police Station,
Madurai.

Crime No.129/2023

... Respondent/Complainant

For Petitioner : M/s.Pabitra Kumar Paik
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.129 of 2023 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The respondent police registered a case as against this petitioner in Crime No.129 of 2023 for the offence under Section 8(c) r/w. Section 20(b)(ii)(C) of NDPS



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Act 1985 and remanded him into judicial custody on 27.03.2023. Therefore, the petitioner has filed this petition seeking bail.

2. The case of the prosecution is that the petitioner along with other accused persons was found in possession of 23.500 kgs. of ganja. The petitioner/A2 was arrested on 27.03.2023 along with A1. The respondent Police has recovered 10 kgs. of ganja from the petitioner and 12 kgs. from A1. On their confession statements, the respondent Police has also recovered 1.5 kgs. of ganja from A3 on 16.04.2023.

3. The learned counsel appearing for the petitioner submits that the recovery from the petitioner is only 10 kgs. of ganja and therefore, it could not be treated as commercial quantity. The petitioner is in jail from 27.03.2023. Therefore, he prays for grant of bail.

4. The learned Additional Public Prosecutor, by referring the provisions under the NDPS Act, submits that it is not necessary that the entire contraband has to be recovered from the petitioner. The petitioner/A2 and the first accused were arrested simultaneously and 10 kgs. of ganja was recovered from the petitioner/A2 and another 12 Kgs. of ganja from A1. In all, 22 kgs. of ganja was recovered during the time of arrest, i.e. commercial quantity. If any person was found in possession of commercial quantity of contraband, then, Section 37 of NDPS Act would attract as against that person.



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5. The learned Additional Public Prosecutor further submits that the petitioner is from the State of Orissa, the first accused is from Thoothukudi and the third accused is from Salem. According to him, there were frequent calls between A1, A2 and A3. A1 contacted A3 for 682 times and this petitioner/A2 has contacted A3 for 114 times. From the confession statement of the petitioner/A2 and A1, further quantity of ganja to an extent of 1.5 kgs. was also recovered from A3. He further submits that in this case, final report has also been filed and the case is now posted for trial on 26.04.2024. The twin condition as required under Section 37 of the Act has not been satisfied and therefore, he prayed for dismissal.

6. This Court considered the rival submissions made.

7. Section 37(b) of the NDPS Act is a bar for grant of bail on cases involving commercial quantity and the same is extracted as under:

“37. Offences to be cognizable and non-bailable. —

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) —

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless--



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(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

8. The word employed in these provisions is as to “their involvement in the offence of commercial quantity” and not the possession of the contraband with them. In this case, A1 was arrested along with the petitioner/A2 and the respondent Police has recovered 22 kgs. of ganja from both A1 and A2, i.e. commercial quantity.

9. Though individual recovery was made from A1 and A2, the fact remains that both the accused were arrested simultaneously and the involvement of contraband is of commercial quantity. Moreover, A1 and A2 were having contact with A3, from whom, the respondent Police has also recovered 1.5kgs. of ganja. As per Sections 35 and 54 of the NDPS Act, there is a presumption and it is for the accused to rebut the same during trial.



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10. Considering the nature of allegations and the quantity involved, this Court is not inclined to grant bail to the petitioner.

11. Accordingly, this Criminal Original Petition is dismissed. Since the case is ripe for trial and it is listed for trial on 26.04.2024, this Court directs the trial Court to expedite the trial and conclude the same within a period of four months from the date of receipt of a copy of this order. The respondent Police is directed to produce the prosecution witnesses without any delay. The trial Court shall decide the case independently without being influenced by any observation made by this Court.

sd/-
23/04/2024

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/08/2024

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

OGY

TO

- 1 THE DISTRICT AND SESSIONS JUDGE
FOR EC AND NDPS ACT CASES,
(I ADDITIONAL DISTRICT JUDGE FOR NDPS ACT),
MADURAI.
- 2 THE INSPECTOR OF POLICE
USILAMPATTI TOWN POLICE STATION, MADURAI.



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

ORDER
IN
CRL OP(MD) No.4380 of 2024
Date :23/04/2024

SS/GS/SAR- /02/08/2024/6P/4C

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