



CRL OP(MD). No.4592 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 26/03/2024

PRESENT

The Hon`ble Mr.Justice **M.DHANDAPANI**

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Nanthakumar,

... Petitioner/ Accused No.2

Vs

The Inspector of Police,
Usilampatti Town Police Station,
Madurai District.
In Crime No.382/2022.

... Respondent/Complainant

For Petitioner : Mr.Subes Babu
Senior Counsel
for M/s.Sathish Kumar.K,
Advocate.
For Respondent : Mr.B.Nambiselvan,
Additional Public Prosecutor

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

PRAYER :-

To enlarge the petitioner on bail in CC No.319/2023 on the file of the Principal Special Court for EC and NDPS Act Cases, Madurai.

ORDER : The Court made the following order :-

The petitioner/A2 who is facing trial for the offences punishable under



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Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act, in C.C.No.319 of 2023 on the file of the Principal Special Court for EC and NDPS Act Cases, Madurai, in Crime No.382 of 2022, on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioner and other accused persons were found in joint possession of 22 kgs of Ganja. Hence, the case.

3.The learned Senior counsel for the petitioner would submit that three persons were arrested by the respondent police with contraband. From the first accused namely, Pasupathi, 8 kgs and 250 grams of Ganja was recovered and from the petitioner, two bags were seized, each contains 7kgs and 6 kgs and 750 grams, totally 13 kgs and 750 grams of Ganja. For which, separate mahazar was preferred as against the petitioner on 22.09.2022 at 13.45 hours. Even as per the mahazar, the recovered contraband is only 13 kgs and 750 grams. A bodily search was also conducted on the petitioner and recovered Rs.50,000/- and except this recovery, no recovery was made from the petitioner. However, the very same fact was argued before this Court while considering the earlier applications and the same were rejected by this Court. He would further submit this is the seventh application. The trial Court has failed to consider the fact that the separate mahazar was preferred as



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against the accused persons. Further, the petitioner was arrested on 22.09.2022 and he is in incarceration for more than one year and the charge sheet was already filed before the concerned Court. He would further submit that the petitioner is having no previous case and hence he prays for bail.

4.The learned Additional Public Prosecutor would submit that this is the petitioner's seventh application for bail and the very same issue was elaborately argued by the learned counsel for the petitioner before this Court while considering the earlier applications and in the present petition also, there is no change of circumstances. He would further submit that the allegation against the petitioner is that the petitioner and other accused were found in joint possession of 22 kgs. However, he fairly conceded that the separate mahazar was preferred in respect of the accused person.

5.Heard the learned counsel on either side and perused the materials available on record including the First Information Report.

6.Admittedly, the respondent police intercepted three persons, namely, Tamil Selvi, Pasupathi and the petitioner herein and no recovery was made from the



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said Tamil Selvi and all those recovery was made only from the petitioner and A1.

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In respect of A1, the seized contraband is 8kgs and 250 grams and from the petitioner is 6kgs and 750 grams and 7kgs, totally 13kgs and 750 grams were recovered and separate mahazar was also preferred as against the petitioner and this is the petitioner's seventh application and the said issue was already discussed by this Court and this Court arrived at a conclusion that the petitioner was found in joint possession of 22 kgs of Ganja, which is a commercial quantity. However, this Court perused the entire records and it reveals that the separate mahazar was preferred as against the petitioner and it will contain only 13kgs and 750 grams of Ganja, which is not a commercial quantity.

7.Considering the change of circumstances in the present case and also considering the fact that the petitioner has no previous case and the petitioner is in judicial custody since 22.09.2022, this court is inclined to grant bail to the petitioner subject to the following conditions:

8.Accordingly, this Criminal Original Petition is ordered and the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum to the



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satisfaction of the learned Principal Special Court for EC and NDPS Act Cases, Madurai, and on further conditions that:

(a) 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 concerned Court each and every hearing date, failing which, the bail granted by this Court shall stand vacated automatically;

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

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

(e) after the seizure procedure is over, the concerned Magistrate and the respondent Police are directed to comply with the guidelines enumerated under section 52(A) of NDPS Act and as per the guidelines issued by the Hon'ble Supreme Court of India in the case of *Union of India Vs. Mohanlal and Another* ((2016) 3 SCC 379).

(f) 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



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learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court

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in *P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]*; and;

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

sd/-

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26/03/2024

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

SJI

TO

- 1 THE PRINCIPAL SPECIAL JUDGE,
FOR EC AND NDPS ACT CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE
USILAMPATTI TOWN POLICE STATION,
MADURAI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.K.SATHISH KUMAR, Advocate (SR-3676[I] dated 26/03/2024)



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ORDER
IN
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Date :26/03/2024

SS/SAR- /26/03/2024/7P/6C

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