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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 25/10/2024

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.OP(MD)No.18366 of 2024

Sivachandran : Petitioner/A6

Vs.

The State of Tamil Nadu
Rep. by Inspector of Police,
Thiruchendur Police Station,
Thoothukudi District.
(Crime No.164 of 2023) : Respondent/Complainant

For Petitioner : Mr.A.Mohamed Haneef

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

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

ORDER:-The Court made the following order:-

The petitioners/A6, who was arrested and remanded to judicial custody, on 10/05/2022 for the offences under sections 8(c) r/w sections 20(b)((ii)(C) and 25 of NDPS Act, in Crime No.164 of 2023 on the file of the respondent police, seeks bail.



2.The case of the prosecution is that the de-facto complainant received a secret information that Ganja was transported illegally, On surveillance at about 01.00 pm near Kumarapuram, at that time, they found the vehicle bearing registration No.TN-92-E-6345, was intercepted. He has stated to be taken to another route. So, they went near Kumarapuram area. At that time, they found the above said vehicle parked. The people engaged in loading boxes. On seeing the police party, all the accused persons escaped from that place. Only Ramesh was present in the above said place. He informed that above said coconut thope belongs to one Abibu and his parents are maintaining the above said thope. He also stated that one Balan, who is the paternal junior uncle came to that place along with his friends namely Muthu Dinesh and Saruk Raja for taking bath. Following the above said vehicle, another vehicle bearing registration No.TN-92-D-5342 came to that spot and transporting the boxes to the vehicle parked bearing registration No.TN-92-E-6345. After loading the same, Balan, Iruthaya Jenish, Kalimuth and Atriyan went away from that place in another vehicle. They made a search in the vehicle parked TN-94-E-6345. It was found loaded with Ganja. Further process was



undertaken as per rules. Vehicles were also seized. They found 120 kgs of Ganja. Based upon the above said occurrence, the case was registered in Crime No.154 of 2023 for the offences as stated above. This petitioner was arrested and remanded to judicial custody.

3.Heard both sides.

4.This is the third application filed before this court. The earlier two applications were dismissed with liberty to the petitioner to approach the trial court for bail since final report stated to be field. After that, he moved the trial court. It dismissed the bail application in CrI.MP No.2842 of 2024, dated 24/09/2024. After that, this petition is filed.

5.At the time of hearing, the learned counsel for the petitioner has brought on record the orders passed by the Coordinate Bench of this court viz., CrI.OP(MD)Nos. 7332 and 7359 of 2024, dated 08/08/2024; CrI.OP(MD)Nos. 9212 and 9775 of 2024, dated 13/08/2024 and CrI.OP(MD)No. 14808 of 2024, dated 04/09/2024.



6.The last order is dated 04/09/2024 by referring to the earlier orders. A detailed order was passed on 13/08/2024 making the following observations:-

"6.It is seen that the trial is yet to be commenced. The petitioners are in jail from 8/6/2023 and 5/11/2023 respectively. Considering the fact that they re also identically situated as of A1 and A7 and the prosecution and the bail order which is granted in respect of the other accused in the same case having become final and considering the fact that it may take a little while to complete the trial also, I am inclined to enlarge the petitioners on bail."

7.The earlier order, dated 08/08/2024 was allowed by making the following observations:-

"7.The contraband has been recovered by the Police from a vehicle bearing Reg.No.TN~92~E~6345 on 08.05.2023 in a private farm belonging to one Abibu. One Ayyadurai is the care~taker of the private farm. His son, Ramesh, is working as a Driver. He is said to have permitted the accused inside the farm on 08.05.2023 at about



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01.45 pm, by receiving a sum of 500/-. The accused is said to have approached the said Ramesh for the purpose of taking bath and to clean the vehicle. According to Ramesh, when this vehicle, Mahindra Bolero Pickup, is in the farm, another vehicle has also come to the farm and certain goods have been transferred from the first vehicle to the second vehicle. These goods are projected as the contraband, Ganja.

8.The respondent Police has recovered 120 kg of Ganja from the vehicle bearing Reg.No.TN~92~E~6345. It is not known as to how the caretaker,Ramesh could not sense the odour of the contraband, when such huge quantity was shifted from one vehicle to another. It is also not known as to how some strangers have been permitted to enter into a private farm, without the knowledge of the farm owner, for the purpose of washing their vehicle, in the broad day-light.

9.Be that as it may, the fact remains that none of the accused persons were arrested from the spot. Though the contraband has been



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recovered from the private farm, the respondent Police has not conducted any investigation as to the role of the care-taker or the farm owner in the commission of offence, if any. It is not known as to whether the call details of the care-taker and the owner of the farm were verified. The investigation officer has also failed to conduct any investigation as to the location, from where the vehicle has originally come from. The investigation agency ought to have conducted a proper investigation and identified from the nearby check-posts as to when the vehicle crossed the check-post and how long the vehicle was in the farm.

10.The investigation agency has not collected any material as against the petitioners, excepting the confession statement and the statement of the care-taker, Ramesh, recorded u/s.161(3) CrPC. Admittedly, the accused are from a different place and it is not known as to how the care-taker, Ramesh, knew the names of the accused and also informed the same to the Police. To be noted, the names of the accused are mentioned in the FIR."



8. So according to the petitioner, the above said observations squarely apply to the petitioner also, since it is stated by the prosecution that this petitioner along with the co-accused alleged to have ran away from the place where the contraband was recovered. Since similarly placed accused persons were enlarged on bail, the rule of parity may also be extended to the petitioner.

9. Per contra, the learned Additional Public Prosecutor would submit that key role was played by this petitioner and huge quantity of contraband measuring 120 kgs was recovered from the place of occurrence, from where this petitioner along with the co-accused ran away.

10. Reading of the materials collected during the course of investigation also supported the observations made by the Coordinate Bench of this court in the above said matters. Except the confession statement of himself and the co-accused, no other material is available to connect this petitioner.



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11. So, on the rule of parity, this criminal original petition is **allowed**. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five thousand only) with two sureties each for a like sum to the satisfaction of learned Principal Special Court for Trial of NDPS Act Cases, Madurai and on further condition that the petitioner shall report before the said court daily at 10.30 a.m. until further orders.

Index:Yes/No
Internet:Yes/No
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25/10/2024



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To,

- 1.The Principal Special Court for
Trial of Narcotic Drugs and Psychotropic
Substances Act Cases,
Madurai.
- 2.The Inspector of Police,
Thiruchendur Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli Dt.



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G. ILANGO VAN, J

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