



CRL OP(MD). No.20603 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 10/12/2024

PRESENT

The HONOURABLE MR. JUSTICE N.ANAND VENKATESH

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Saravanan @ Saravana Kumar,

... Petitioner/ Accused No.2

Vs

The State of Tamil Nadu,
Rep. by the Inspector of Police,
Theppakulam Police Station,
Madurai City,
(Crime No. 423 of 2023).

... Respondent/Complainant

For Petitioner : Mr.G.Karuppasamy Pandian,
for Vijayaraja. J, Advocate.

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

PETITIONS FOR BAIL Under Sec.483 of BNSS

PRAYER :-

To enlarge the petitioner on bail who is in judicial custody in C.C. No. 158 of 2024 on the file of Learned IInd Additional District Judge, Special Court for NDPS Cases, Madurai in connection with Crime No. 423 of 2023 on the file of resp. police..

ORDER : The Court made the following order :-

The petitioner / Accused No.2, who was arrested and remanded to judicial



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custody on 10.10.2023 and was facing trial for the offence under Sections 8(c), 20(b)(ii) (B), 29(1) of NDPS Act in C.C.No.158 of 2024, on the file of the learned II Additional District Judge, Special Court for NDPS Cases, Madurai, seeks bail.

2. The case of the prosecution is that the Sub Inspector of Police received an information on 04.09.2023 and it was recorded in the general diary and the information was sent immediately to the superior officer. After obtaining permission, the Police team proceeded to the spot and found three accused persons and when the Police questioned, they disclosed their names. Thereafter, the Police informed them about their right under Section 50 of the NDPS Act. Since they waived their right, a search was conducted and 21 kgs of ganja was seized by the Police. On further enquiry, it came to light that Accused Nos.1 to 3 had purchased ganja from Accused Nos.4 and 5, three days prior to the date of occurrence and 25 kgs of ganja was collected by Accused Nos.1 to 3 from Accused Nos.4 and 5 and four kgs were already sold and the remaining 21 kgs was planned to be taken by Accused Nos.1 to 3 to Rameshwaram via train. When they were waiting for the train, the Police party caught them red handed. Accused Nos.1 to 3 were also arrested. There are totally five accused persons in this case and the petitioner has been arrayed as Accused No.2.

3. The learned counsel appearing for the petitioner submitted that a false has



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been foisted by the respondent Police. He further submitted that the petitioner has nothing to do with the alleged offence and the very basis of the case of the prosecution was demolished, when the earlier order was passed by this Court in Crl.O.P.(MD).No.11346 of 2024 by an order dated 21.08.2024, when Accused No.3 was enlarged on bail. He further submitted that the prima facie finding rendered by this Court will enure in favour of the petitioner.

4. Per contra, the learned Additional Public Prosecutor by placing reliance upon the counter-affidavit filed by the respondent Police submitted that the accused persons were found in possession of 21 kgs of ganja and there was no previous case against the petitioner (A2) and therefore, there was no need for the Police to foist a false case against the petitioner. He further submitted that the order passed by this Court enlarging Accused No.3 on bail, turned on its own facts and it was found that Accused No.3 was not in the spot at the time of incident and therefore, this Court had only rendered a prima facie finding and that cannot be taken advantage by the petitioner who along with Accused No.1 were found in possession of 21 kgs of ganja. He further submitted that the petitioner has not satisfied the twin conditions under Section 37 of the NDPS Act.

5. This Court has carefully considered the submissions made on either side and the materials available on record.



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6. The specific case of the prosecution is that Accused Nos.1 to 3 were found on the spot and on search, 21 kgs of ganja was seized from them. When Accused No.3 filed a bail petition before the Court in CrI.O.P.(MD).No.11346 of 2024, he took a stand that he was not even present in the scene of occurrence and he was taken away by the Police even on the previous day of the occurrence. To substantiate the same, he relied upon the CCTV footage. This Court directed the Commissioner of Police, Madurai City to conduct an inquiry with reference to the CCTV footage and to submit a report. That report was taken into consideration by this Court and it was found that Accused No.3 was taken by the Police personal one day prior to the alleged recovery. That apart, there were prevaricating statement made by the Constable and ultimately, disciplinary proceeding was initiated against the Police Constable and a charge memo was also issued. This was taken into consideration by this Court and a prima facie finding was rendered to the effect that the petitioner therein has made out a prima facie case which may lead to his acquittal from the case.

7. It is submitted that the finding that was rendered for Accused No.3 will not enure in favour of the petitioner (Accused No.2). The finding that was rendered for Accused No.3 after taking into consideration the report submitted by the Commissioner of Police, virtually, watered down the case of the prosecution, since it is the specific case of the prosecution that Accused Nos.1 to 3 were found in



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possession of the contraband. If Accused no.3 was not present in the spot as per the report of the Commissioner, then the very basis on the case of the prosecution will be put into question. Therefore, obviously, the finding that was rendered by this Court for Accused No.3 will also work in favour of Accused No.2.

8. It must be made clear that the findings that are rendered by the Court while considering the bail petition in the light of Section 37 of the NDPS Act are prima facie findings only to see, if a case has been made out, which will ultimately enure in favour of the accused in the trial. Such finding will not bind the trial Court or it will not tie the hands of the prosecution to establish the case beyond reasonable doubts before the trial court. Therefore, the findings rendered by this Court in the bail petition will confine itself only to those parameters that has to be determined by the Court while considering the bail application qua Section 37 of the NDPS Act.

9. In the light of the above discussion, this Court is satisfied that the twin conditions under Section 37 of the NDPS Act has been satisfied. This Court also takes into consideration the fact that there are no previous cases against the petitioner. That apart, the petitioner has suffered incarceration from 04.09.2024 and the investigation has been completed and the Police report has already been filed and the case is now pending in C.C.No.158 of 2024 before the learned II Additional District Judge, Special Court for NDPS Cases, Madurai. Hence, this Court is inclined to grant bail to the



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petitioner subject to the following conditions.

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10. Accordingly, the criminal original petition is ordered and the petitioner is ordered to be released on bail on executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned II Additional District Judge, Special Court for NDPS 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 Court below during every date of hearing without fail.

[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] 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 learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].



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[f] If the accused thereafter absconds, a fresh FIR can be registered under
Section 269 of BNS, 2023.

sd/-
10/12/2024

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10 / 12 /2024

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

TSG

TO

1 THE II ADDITIONAL DISTRICT JUDGE, SPECIAL
COURT FOR NDPS CASES, MADURAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
THEPPAKULAM POLICE STATION,
MADURAI CITY,

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

+1 CC to M/s.J.VIJAYARAJA, Advocate (SR-15175[I] dated 10/12/2024)

ORDER
IN

CRL OP(MD) No.20603 of 2024
Date :10/12/2024



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PSP/ /SAR /10.12.2024/ 8P/ 6C

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